United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR PETITIONER AND JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14, 209

DISTRICT OF COLUMBIA,

Petitioner,

v.

WM. K. KARSUNKY, et al., a partnership doing business as Karsunky, Weller & Gooch,

Respondents.

United States Court of Appeals
For the
District of Columbia Circuit
FILED JAN 30 1958
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CLERK
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No. 14, 210

DISTRICT OF COLUMBIA,

Petitioner,

v.

JAMES M. GONGWER,

Respondent.

QUESTION PRESENTED

Where the applicable statute states that "the words 'unincorporated business' do not include any trade or business which by law * * * cannot be incorporated * * *", the questions presented are:

1. Is the trade or business of professional engineers one which by law cannot be incorporated?

2. Does the Professional Engineers' Registration Act prohibit the incorporation of professional engineers?

INDEX
Subject Index

	Page
Question Presented	Frontispiece
Jurisdictional Statement	3
Statement of the Case	3
Statutes Involved	5
Statement of Points	8
Summary of Argument	9
Argument:	
I - There is no law in the District of Columbia which prohibits engineers from incorporating.	11
A- The Professional Engineers' Registration Act is applicable to natural persons only. . .	13
B- The word "person" as used in the Professional Engineers' Registration Act includes natural persons only.	14
II - Congress did not intend the Professional Engineers' Registration Act to prohibit engineers from practicing in the corporate form. . . .	21
A- Long standing administrative determination is that engineers may be incorporated. . . .	25
1- Administrative construction by the Board of Registration.	27
2- Interpretation by the Corporation Counsel.	29
3- Interpretation by the Public.	31

Page

B - Similar statutes in other jurisdictions support the view that it was not the purpose of the Registration Act to prohibit engineers from incorporating. 33

Conclusion 36

CASES CITED

Adair v. District of Columbia, B.T.A. Dkt. No. 1228, affirmed, District of Columbia v. Adair, 90 U.S. App. D.C. 368, 196 F. 2d 603 . . . . . 29, 30, 31

Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349, 85 L. Ed. 881, 61 S. Ct. 580 27

Folsom v. Summer, Locatell & Co., Inc. (1954), 90 Ga. App. 696, 83 S. E. 2d 855 15

Ghent v. District of Columbia, D.C.T.C. Dkt. No. 1397, 82 W.L.R. 494, reversed, District of Columbia v. Ghent, 95 U.S. App. D.C. 103, 220 F. 2d 210 . . . . . 29, 30, 31, 32

Hassett v. Welch (1938), 303 U.S. 303, 82 L. Ed. 858, 58 S. Ct. 559 26

Norwegian Nitrogen Products Co. v. United States (1933), 288 U.S. 294, 77 L. Ed. 796, 53 S. Ct. 350 . . . . . 26, 32

People v. Dr. Scholl's Foot Comfort Shops, Inc. (1938), 277 N.Y. 151, 13 N.E. 2d 750 . . . . . 19, 20

Potomac Engineers, Inc. v. Walser, 127 F. Supp. 41 13

	Page
Potomac Engineers, Inc. v. Walser, 96 U.S. App. D.C. 64, 223 F. 2d 356	14, 8
Silver v. Lansburgh & Bro., 72 App. D.C. 77, 111 F. 2d 518	21, 22, 34
United States v. Farrar, 281 U.S. 624, 74 L. Ed. 1078, 50 S. Ct. 425	27, 35
United States v. State Bank of North Carolina (1832), 31 U.S. (6 Pet.) 29, 8 L. Ed. 308	25, 31

STATUTES CITED

Act of August 17, 1937, 50 Stat. 673, ch. 690 . . .	3
Act of May 16, 1938, 52 Stat. 371, ch. 223, Section 8	3
Act of July 10, 1952, 66 Stat. 543, ch. 649, Section 3	3
Act of July 30, 1947, 61 Stat. 633, ch. 388, Section 1	17
Act of September 19, 1950, 64 Stat. 854, et seq., ch. 953:	
Section 1	6
Section 2	18
Section 2(b).	6
Section 3	6
Section 4	7, 14, 18
Section 8(b) Subparagraphs 5 and 6	24
Section 8(n)	27
Section 8(o)	27
Section 8(p)	28
Section 11	7
Section 11(a).	23
Section 11(b).	23

	Page
Section 14	23
Section 15(a)	29
Section 15(c)	29
District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 332:	
Section 1, Title I	5
Section 4(h), Title I	5, 12
Section 1, Title VIII	5
Section 3, Title VIII	12
Section 1, Title XV	3
District of Columbia Code, 1951:	
Section 2-1801	6
Section 2-1802	18
Section 2-1802(b)	6
Section 2-1803	6, 23
Section 2-1804	7, 14, 19
Section 2-1808(b)	15
Section 2-1808(b), (5) (6)	24
Section 2-1808(e)	15
Section 2-1808(g)	15
Section 2-1808(n)	27
Section 2-1808(o)	27
Section 2-1808(p)	28
Section 2-1810(d)	7
Section 2-1811	7, 23
Section 2-1811(a)	23
Section 2-1811(b)	23
Section 2-1814	23
Section 2-1815(a)	29
Section 2-1815(c)	29
Section 47-1551c(h)	5, 12
Section 47-1574	5
Section 47-1574 b	12
Section 47-1593	3
Section 47-2403	3
Section 47-2404	3

Page

United States Code:

Title 1, Section 1 . . . . . 10, 17

MISCELLANEOUS AUTHORITIES CITED

Volume 2, Sec. 5107, Sutherland, Statutory Construction, Page 521 32

Volume 3, Sec. 6105, Sutherland, Statutory Construction, Page 162 33

Senate Report No. 1921, 81st Congress, 2d Session . 33

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Petitioner,

v.

JAMES M. GONGWER,

Respondent.

No. 14, 211

DISTRICT OF COLUMBIA,

Petitioner,

v.

BERNARD F. LOCRAFT,

Respondent.

No. 14, 212

DISTRICT OF COLUMBIA,

Petitioner,

v.

JAMES M. GONGWER, as surviving partner of himself and Thomas W. Marshall, a partnership having done business as Marshall and Gongwer,

Respondents.

No. 14, 213

DISTRICT OF COLUMBIA,

Petitioner,

v.

STEWART H. BEALL and JAMES W. LeMAY, a partnership doing business as Beall & LeMay,

Respondents.

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

These proceedings are to review decisions of the District of Columbia Tax Court, based upon its Findings of Fact and Conclusions of Law, holding that respondents were exempt from the unincorporated business franchise tax law for the years 1952, 1953 and 1954, and are entitled to refunds of all unincorporated business franchise taxes paid by them. The decisions of the District of Columbia Tax Court were entered on September 9, 1957 (J.A. 23-28). Petitions for review by this Court were filed October 4, 1957 (Tr. 77, 90, 103, 114, 127).

The jurisdiction of this Court is invoked pursuant to the provisions of Section 1, Title XV, Article 1 of the Act of July 16, 1947, 61 Stat. 359, ch. 258 (Section 47-1593, D. C. Code, 1951), and Sections 3 and 4, Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223, as amended by Section 3 of the Act of July 10, 1952, 66 Stat. 543, ch. 649 (Sections 47-2403 and 47-2404, D. C. Code, 1951, Supp. V).

STATEMENT OF THE CASE

These five cases were consolidated for trial in the District of Columbia Tax Court, and have been consolidated by this Court for purposes

of filing briefs and a single joint appendix, and for oral argument. Respondents were assessed and paid unincorporated business franchise taxes for the years 1952, 1953, and 1954. Thereafter, they filed with the Assessor, D.C. timely claims for refund alleging that they were engaged in a trade or business which could not, by law, be incorporated, and that they were, therefore, exempt from the application of the unincorporated business franchise tax. The claims for refund were denied, and respondents, within time, petitioned the District of Columbia Tax Court for a review of the denials of their claims for refund (J.A. 8-10).

The case was tried below upon stipulations entered into by the parties. The stipulations read as follows:

> "It is stipulated by and between counsel for the petitioners and respondent in cases 1589 to 1593, both inclusive, that Paragraph 7, subsections (a) and (b) of each petition be taken as true, namely, that the petitioners, with the exception of Marshall in case 1592, during years for which refunds are being sought, were professional engineers as defined in D. C. Code, Title 2, Section 1802 (d); were engaged during those years in the practice of engineering as defined by D. C. Code, Title 2, Section 1802(a), were registered as engineers under the provisions of Title 2, Section 1804; and during said years were in possession of unrevoked certificates of registration." (J.A. 6).
>
> * * *
>
> "It is hereby stipulated by and between counsel for petitioners and counsel for respondent in each of the above-entitled cases that, during the tax years involved and up to the present time, there were of record in the office of the Superintendent of Corporations of the District of Columbia, engineering

corporations incorporated under the laws of the District of Columbia for the purpose of engaging in the practice of engineering and in rendering engineering services in the District of Columbia.

"It is further stipulated and agreed that, during the tax years involved and up to the present time, there were of record in the office of the Superintendent of Corporations of the District of Columbia, engineering corporations organized under the laws of the various states for the purpose of engaging in the practice of engineering and in rendering engineering services, and which have qualified to do business in the District of Columbia under the laws of the District of Columbia." (J.A. 7).

STATUTES INVOLVED

Section 1 and Section 4(h), Title I, and Section 1, Title VIII of the District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 332, 345 (Section 47-1551c(h) and Section 47-1574, D. C. Code, 1951), as amended, provide, insofar as here pertinent, that:

"Sec. 4(h). The words 'trade or business' include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; * * *."

"Sec. 1. DEFINITION OF UNINCORPORATED BUSINESS. -- For the purposes of this article (not alone of this title) and unless otherwise required by the context, the words 'unincorporated business' mean any trade or business, conducted or engaged in by any individual, whether resident or non-resident, statutory or common-law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee, assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would

be taxable under title VII of this article. The words 'unincorporated business' do not include any trade or business which by law, customs, or ethics cannot be incorporated or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor."

Sections 1, 2(b), 3, 4, 10(d) and 11 of the Act of September 19, 1950, 64 Stat. 854, et seq., ch. 953 (Sections 2-1801, 2-1802(b), 2-1803, 2-1804, 2-1810(d), and Section 2-1811, D. C. Code, 1951) provide:

"SECTION 1. SHORT TITLE. -- This Act shall be known and may be cited as the 'Professional Engineers' Registration Act'.

"SEC. 2. DEFINITIONS. -- As used in this Act--

* * *

(b) The term 'professional engineer' shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, customarily acquired by a prolonged course of specialized intellectual instruction and study and practical experience, is qualified to engage in the practice of engineering as attested by his certificate of registration as a professional engineer.

* * *

"SEC. 3. PRACTICE OF ENGINEERING DECLARED TO BE SUBJECT TO REGULATION. -- In order to safeguard life, health, and property and promote the public welfare, the practice of engineering in the District of Columbia is hereby declared to be subject to regulation in the public interest. It is further declared to be a matter of public interest and concern that the profession of engineering merit and receive the confidence of the public and

corporations incorporated under the laws of the District of Columbia for the purpose of engaging in the practice of engineering and in rendering engineering services in the District of Columbia.

"It is further stipulated and agreed that, during the tax years involved and up to the present time, there were of record in the office of the Superintendent of Corporations of the District of Columbia, engineering corporations organized under the laws of the various states for the purpose of engaging in the practice of engineering and in rendering engineering services, and which have qualified to do business in the District of Columbia under the laws of the District of Columbia." (J.A. 7).

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be taxable under title VII of this article. The words 'unincorporated business' do not include any trade or business which by law, customs, or ethics cannot be incorporated or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor."

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"SEC. 3. PRACTICE OF ENGINEERING DECLARED TO BE SUBJECT TO REGULATION. -- In order to safeguard life, health, and property and promote the public welfare, the practice of engineering in the District of Columbia is hereby declared to be subject to regulation in the public interest. It is further declared to be a matter of public interest and concern that the profession of engineering merit and receive the confidence of the public and

that only qualified persons be permitted to engage in the practice of engineering. All provisions of this Act relating to the practice of engineering shall be construed in accordance with this declaration of policy.

"SEC. 4. PRACTICE OF ENGINEERING WITHOUT REGISTRATION PROHIBITED. -- Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, or by verbal claim, sign, advertisement, letterhead, card, or in any other way, represent himself to be a professional engineer, or through the use of the title including the word 'engineer' or words of like import, or any other title, imply that he is a professional engineer, unless such person is registered under the provisions of this Act.

* * *

"SEC. 10. EXEMPTIONS. -- Nothing in this Act shall be construed to affect or prevent the following:

* * *

"(d) The performance of engineering work by any person who acts under the supervision of a professional engineer, or by an employee of a person lawfully engaged in the practice of engineering, and who, in either event, does not assume responsible charge of design or supervision.

* * *

"SEC. 11. SEAL OF REGISTRANTS. -- (a) Each person registered under this Act may obtain a seal of a design authorized by the Board which shall bear the registrant's name and registration number, the legend 'Registered Professional Engineer', and such other words or figures as the Board may deem necessary. Such seal, or a facsimile imprint of same, shall be

stamped on all plans, specifications, and reports by the registrant responsible for the accuracy and adequacy of such plans, specifications, and reports, when filed with public authorities.

"(b) It shall be unlawful for a registered engineer to affix or permit his seal to be affixed to any plans, specifications, or drawings for which he does not assume full responsibility for the adequacy and accuracy thereof.

"(c) It shall be unlawful for any person to use such seal during the period the registration of the holder thereof is expired, suspended, or revoked, or to use a seal of any design not approved by the Board."

STATEMENT OF POINTS

1. The Tax Court erred in holding that the trade or business of engineering is one which, by law, cannot be incorporated.

2. The Tax Court erred in not holding that The Professional Engineers' Registration Act is applicable to natural persons only, is inapplicable to artificial persons, and cannot be construed to mean that corporations engaged in the trade or business of engineering are, per se, unlawful.

3. The Tax Court erred in not holding that Congress did not intend the Professional Engineers' Registration Act to prohibit corporations from engaging in the trade or business of engineering as evidenced by (1) the absence of express language to this effect in the Act, (2) the long-standing, practical administrative construction of the Act by those charged with the enforcement thereof, and (3) similar statutes of a vast majority of the 48 states, all designed to accomplish the same purpose as the District statute,

which permit corporations to engage in the trade or business of engineering through employment of registered engineers.

SUMMARY OF ARGUMENT

Prior to 1950, there was no law in the District of Columbia which required persons engaged in the practice of engineering to be licensed or registered as professional engineers. In 1950, Congress enacted the Professional Engineers' Registration Act which was designed to protect the public from incompetent engineers and the resultant danger to life, health and public welfare. The purpose of the Registration Act is fulfilled by the registration of all individuals engaged in the practice of engineering, including engineers employed by corporations. The legal sanctions imposed for practicing engineering without first being registered under the Act apply to all individuals whether self-employed or corporation-employed. It was not intended, contrary to the decision of the Tax Court, to make unlawful the practice of engineering by individual registered professional engineers who are officers or employees of corporations. This Court has held that the Registration Act is inapplicable to corporations and applicable to natural persons only. Since there is no other law in the District of Columbia pertaining to the practice of engineering, it follows that there is no law in the District which prohibits either the incorporation of registered professional engineers or the employment of registered professional engineers by corporations.

The word "person" as used in the Registration Act, does not include artificial persons, and, when modified by the personal pronoun "he", imports the masculine gender. Under Section 1, Title 1, United States Code, words of the masculine gender include the feminine gender as well, but exclude the neuter gender. Also, the context in which the words "person" and "he" are used in the Registration Act clearly indicates that these words do not include artificial persons. To say that Congress intended to give the word "person" two different meanings within the same section of the Act without expressing its intention so to do by defining the word "person" in the definition clause of the statute, is to ascribe to Congress bad legislative practice. That the Act calls for a strict construction in favor of the legality of engineering corporations is strengthened by the fact that the right of engineers to practice in the corporate form, prior to the enactment of the Professional Engineers' Registration Act, had become firmly imbedded in the law of the District of Columbia. The law does not favor the abolishment of existing rights by implication. Had Congress intended a result of such magnitude it would not have left its intention to be gained solely by implication.

The Board of Registration of Professional Engineers and the Corporation Counsel of the District of Columbia are required, under the Registration Act, to enforce the provisions of that Act, and neither have interpreted the Act to prohibit the employment of engineers by corporations. The members of the public directly affected by the provisions

of the Registration Act, i.e., professional engineers, have not interpreted the Act as prohibiting engineers from practicing engineering through corporations. Congress has acquiesced in this administrative interpretation by remaining silent over a period of years.

All 48 States had professional engineers registration acts prior to that of the District of Columbia. The vast majority of these State statutes, all designed to accomplish a purpose similar to that of the District of Columbia statute, specifically provide for the practice of engineering by corporations, subject only to the requirement that various officers or persons in responsible charge of engineering work must be registered professional engineers. This clearly indicates that there is nothing inherent in the practice or profession of engineering which would prohibit a corporation, organized for the purpose, from employing licensed engineers.

The Tax Court erroneously construed the Professional Engineers' Registration Act and, on that basis, declared respondents to be exempt, as engineers, from Unincorporated Business Franchise Tax. Its decision should be reversed.

ARGUMENT

I

There is no law in the District of Columbia which prohibits engineers from incorporating.

Section 3, Title VIII, Article I of the District of Columbia Income and Franchise Tax Act of 1947, as amended, 61 Stat. 345, ch. 258 (Section 47-1574 b, D. C. Code, 1951) imposes a franchise tax on all unincorporated businesses "for the privilege of carrying on or engaging in any trade or business within the District". The definition and limitation of the term "unincorporated business" is found in the Income and Franchise Tax Act (Section 47-1574, supra) which reads, in pertinent part, as follows:

> "* * * The words 'unincorporated business' do not include any trade or business which by law, customs, or ethics cannot be incorporated * * *". (Emphasis supplied)

Section 4(h), Title I of the District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 332 (Section 47-1551c(h), D. C. Code, 1951), as amended, provides, insofar as here pertinent, that:

> "The words 'trade or business' include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; * * *". (Emphasis supplied)

It was agreed by respondents before the Tax Court that the question whether engineering is a trade or business which, by customs or ethics, cannot be incorporated was not presented, and that the sole question in these cases is whether respondents were engaged in a trade or business which, by law, cannot be incorporated.

Prior to 1950, there was no law in the District of Columbia which

required persons engaged in the practice of engineering to be licensed or registered as professional engineers. Any individual could practice engineering in the District of Columbia without registration or license and, presumably, without possessing engineering education or training. The danger to life, health and public welfare inherent in such a situation is manifest. Therefore, in 1950, Congress enacted the Professional Engineers' Registration Act (64 Stat. 854, ch. 953) "In order to safeguard life, health, and property and promote the public welfare * * *".

Respondents contend, and the Tax Court held, that the Registration Act prohibits corporations from employing professional engineers and prohibits engineers from forming a corporation for the purpose of rendering engineering services to others. Petitioner contends that the Registration Act neither so provides nor has such effect.

A. The Professional Engineers' Registration Act is applicable to natural persons only.

In Potomac Engineers, Inc. v. Walser, 127 F. Supp. 41, plaintiff, an engineering corporation, applied to the Board of Registration for Professional Engineers for a certificate of registration as a professional engineer. The application was denied by the Board. Potomac Engineers filed a suit in the United States District Court for the District of Columbia for an injunction to compel the Board to issue to it a license. The District Court denied the injunction, and, in its memorandum decision, stated:

> "It is clear to the Court that the statute must be construed by its very terms as inapplicable to corporations and applicable to natural persons only."

The decision of the District Court was affirmed in Potomac Engineers, Inc. v. Walser, 96 U.S. App. D.C. 64, 223 F. 2d 356, where this Court stated:

> "The District Court held, on cross motions for summary judgment, that 'the statute must be construed by its very terms as inapplicable to corporations and applicable to natural persons only.' 127 F. Supp. 41, 42. We agree."

Since the Professional Engineers' Registration Act has thus been held inapplicable to corporations, and since there is no other statute in the District of Columbia pertaining to professional engineers, it must follow that there is no statute or law in the District of Columbia which prohibits the incorporation of engineers.

B. The word "person" as used in the Professional Engineers' Registration Act includes natural persons only.

In support of its opinion that it is unlawful for engineers to engage in the practice of engineering in the corporate form, the Tax Court cites Section 4 of the Registration Act (Section 2-1804, D. C. Code, 1951) which reads as follows:

> "Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, or by verbal claim, sign, advertisement, letterhead, card, or

> in any other way, represent himself to be a professional engineer, or through the use of the title including the word 'engineer' or words of like import, or any other title, imply that he is a professional engineer, unless such person is registered under the provisions of this chapter." (Emphasis supplied)

The foregoing section, inter alia, makes it unlawful for any "person" to engage in the practice of engineering until "he" is registered under the provisions of the Registration Act. In order to be registered under this Act, "such person" must, among other things, be of good character and repute, a citizen of the United States, at least twenty-five years of age and must be able to speak and write the English language (Section 2-1808 (b)), make application for registration under oath (Section 2-1808(e)) and pass an oral or written examination (Section 2-1808(g)). No corporation can meet the foregoing requirements.

In Folsom v. Summer, Locatell & Co., Inc., (1954), 90 Ga. App. 696, 83 S. E. 2d 855, the Court of Appeals of Georgia had before it the precise question here involved, and stated:

> "1. Code Ann. Supp. § 84-302, Ga. L. 1952, pp. 457-461, provides: 'Except as otherwise provided in this Chapter, no person shall practice architecture in the State of Georgia or use the title 'architect' or 'registered architect' or any words, letters, figures, or any other device indicating or intending to imply that he or she is an architect without having qualified as required by this Chapter.' It is contended that this law prohibits the use of the word 'architect' by a corporation. We do not so construe the law. While the word 'person' may include a corporation, Code, §102-103, that word as used in this instance is modified by the pronouns 'he' and 'she', which restricts the meaning of

> the word as used in the law and which compels the construction that the word 'person' used in its context means natural persons only. If the General Assembly had intended to include corporations in the meaning of the word 'person' as used, it could have easily included the pronoun 'it' with the pronouns 'he' and 'she' or it could have, instead of using any pronouns at all, used the words 'such person.' It would be stretching the meanings of the unambiguous personal pronouns 'he' and 'she' to hold that they include an artificial person, especially when we all have at our disposal the use of the impersonal pronoun 'it', the very existence of which in our grammar is to describe unnatural persons and impersonal objects. There is no prohibition in the law against the plaintiff using the title 'architects and engineers' in its contracts." (Emphasis supplied).

The word "person", when used in an Act of Congress, may include both natural and artificial persons. But its use may be limited to natural persons only. The limitation may be effected by express definition of the word in the statute, or by necessary implication gathered from the context in which the word is used. Where it is manifest that the use of the word "person" in a statute pertains to natural persons only, then the statute does not affect artificial persons. The word "person" as used in the Professional Engineers' Registration Act is always modified by the personal pronoun "he" or "his" or "himself". In so doing, Congress manifested its otherwise obvious intention to restrict the operation of

the Act to natural persons whether male or female.[1] The personal pronouns in the Registration Act do not include the neuter gender for two reasons. First, where words importing the masculine gender are used, Congress has, by omission from Section 1, Title 1, United States Code (Footnote 1, supra) of any reference to the neuter gender, precluded the construction that the neuter gender is included as well. Secondly, the context in which the words "person" and "he" are used in the Registration Act "indicate otherwise"; that is, the context indicates that these words do not include artificial persons.

As used throughout the Registration Act, the word "person" should be given a uniform construction. The meaning of a word does not ordinarily change from clause to clause or from section to section in an Act of Congress unless it is so stated. Section 4 of the Registration

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1 The Act of July 30, 1947, 61 Stat. 633, ch. 388, §1, as amended (Title I, United States Code, § 1) reads, in part as follows:

> "§1. Words denoting number, gender, and so forth
>
> In determining the meaning of any Act of Congress, unless the context indicates otherwise--
>
> * * *
>
> words importing the masculine gender include the feminine as well". (Emphasis supplied)

Act, supra, states, in part, that:

> "Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, * * * unless such person is registered under the provisions of this chapter." (Emphasis supplied)

The words "any person" in the opening clause have been construed by this Court in the Potomac Engineers' case, supra, to exclude artificial persons since only natural persons "shall be registered". But the same words in the very next clause were obviously construed by the Tax Court to include artificial persons. Section 2 of the Registration Act, supra (Section 2-1802, D. C. Code, 1951) contains a list of definitions. The word "person" is not defined therein. But a "professional engineer" is defined as "a person who, * * *". By definition a "professional engineer" must be a natural person. Had Congress intended variable meanings to be ascribed to the words "any person", the intendment could easily have been achieved by definition, or by specific language in those sections where a variation was intended. To assume the contrary is to infer unnecessarily poor legislative draftsmanship. Congress, had it so intended, would have erased the difficulty, guided those charged with the duty of enforcement, and removed any possibility of misinterpretation.

To construe the word "person" as including artificial persons for the purposes of certain sections of the Registration Act, and as excluding artificial persons for the purposes of other sections and subsections of the same Act leaves every section of the law open to uncertainty and attack. The word "person" should be construed to mean natural persons only. That is the only reasonable construction which may be placed upon this word in the context in which it is used throughout the Act. Such construction removes corporations from the operation of Section 2-1804, supra, which makes it unlawful for any "person" to engage in the practice of engineering unless "he" is registered under the other provisions of the Registration Act.

In People v. Dr. Scholl's Foot Comfort Shops, Inc. (1938), 277 N.Y. 151, 13 N.E. 2d 750, the defendant corporation was convicted of unlawfully practicing podiatry. The Appellate Division of the Supreme Court, 252 App. Div. 842, 300 N.Y.S. 602, affirmed without opinion the decision of the lower court. On review of the action of the Appellate Division, the Court of Appeals stated the law to be as follows (13 N.E. 2d at page 752):

> "The Education Law at the time these acts occurred provided that: 'No person not heretofore legally authorized to practice chiropody in the state of New York shall be permitted to engage in such practice unless he shall have been duly licensed so to do.' Education Law, §1402. It further provided that: 'Any person who * * * shall practice chiropody or any branch thereof * * * without

> conforming to the requirements of this article, * * * shall be guilty of a misdemeanor.' Education Law, §1412."

Commenting upon the history of the practice of chiropody and podiatry, the Court of Appeals stated, at page 752, as follows:

> "At common law, any person was permitted, without let or hindrance, to apply palliative and mechanical treatment for deformities and functional disturbances of the feet. Scientific knowledge of the diseases or structure of the feet was not required for the practice of the calling until 1895, when the Legislature, as an aid to the protection of public health, made it mandatory upon persons to obtain certificates of merit, or licenses, from the Pedic Society before permitting them to practice chiropody or podiatry. Starting in that year, the statute has been many times amended. * * * Neither in the original statute nor in any of the amendments thereto has any express restriction been placed upon the employment by corporations of duly licensed chiropodists. * * *".

The contention of the appellee (the People) was stated to be:

> "It is contended, however, that the present statute, in providing that 'no person' shall practice chiropody without a license, bars the employment of licensed chiropodists by a corporation; that a corporation is a person; that it cannot be licensed, and that, therefore, it cannot employ licensed practitioners." (Emphasis supplied).

The Court of Appeals answered this contention as follows:

> "This construction involves an unjustifiable reading into the statute of terms which it does not contain. The statute does not mention corporations, and on its face has no applicability to corporations. Its obvious purpose is to protect the public health by prohibiting any one from treating or diagnosing foot ailments unless qualified, and by requiring such qualifications to be shown by the possession of a license. Neither the

context nor the object of the statute accords with the interpretation which would prevent corporations from employing licensed chiropodists."

II

Congress did not intend the Professional Engineers' Registration Act to prohibit engineers from practicing in the corporate form.

As petitioner has hereinabove pointed out, there was, prior to 1950, no law in the District of Columbia which required persons engaged in engineering work to be licensed or registered as professional engineers. Thus, in Silver v. Lansburgh & Bro., 72 App. D.C. 77, 111 F. 2d 518, this Court, at page 79, stated:

> "There is no more reason to prohibit a corporation, organized for the purpose, from employing licensed optometrists, than there is to prohibit similar employment of accountants, architects, or engineers."

It was stipulated in the Tax Court that there are engineering corporations incorporated under the laws of the District of Columbia for the purpose of engaging in the practice of engineering and the rendering of engineering services in the District of Columbia. It was further stipulated that there are engineering corporations organized under the laws of the various states for the purpose of engaging in the practice of engineering and in rendering engineering services, and which have qualified under the laws of the District of Columbia to do business in the District of Columbia (J.A. 7). The Tax Court held that these corporations are violating the

law and are subject to criminal penalty (J.A. 22). If those corporations are subject to criminal penalty for engaging in the practice of engineering, it follows that individual professional engineers who are officers, directors or employees of such corporations, are also subject to criminal penalty even though they are registered as required by the provisions of the Professional Engineers' Registration Act. This was not the result Congress intended in enacting the Professional Engineers' Registration Act. Nor was it the intention of Congress to force existing locally chartered engineering corporations to dissolve and cease doing business in the District of Columbia, nor to prohibit individual registered professional engineers from forming new corporations for the purpose of rendering engineering services in the District of Columbia. Had Congress intended a result of that magnitude, it would not have left its intention to be gained solely by implication. The right of engineers to practice in the corporate form prior to 1950 had become firmly imbedded in the law of the District of Columbia. Congress was well aware of this when it passed the Professional Engineers' Registration Act. Presumably, it was also aware of this Court's language in Silver v. Lansburgh, supra. Congress does not enact laws in a vacuum, but in the light of history. Not one word in the Professional Engineers' Registration Act even remotely refers to the existing right of engineers to incorporate, or to the existing engineering corporations. The law does not favor the abolishment of existing rights by implication. The Professional

Engineers' Registration Act does not even remotely imply that registered professional engineers may not be incorporated.

The purpose of the Registration Act, as stated in Section 2-1803, D. C. Code, 1951, will be fulfilled by the registration of all individual professional engineers. This is implicit since a corporation can only practice engineering through registered engineers. Any unregistered person who practices engineering in the District of Columbia is subject to the penalties provided in Section 14 of the Registration Act (Section 2-1814, D. C. Code, 1951), whether he is operating as an individual or on behalf of a corporation. Whether the registered engineer is self-employed, a member of a partnership, or an officer of a corporation, only the registered engineer can be in responsible charge of actual engineering work; that is, the preparation of plans, specifications and drawings. In any case, the purpose of the Registration Act, which is essentially to protect the public against incompetent practitioners in the profession of engineering, is achieved.

In connection with the foregoing, it will be noted that Section 11(a) of the Registration Act (Section 2-1811, D. C. Code, 1951) provides that each registered professional engineer obtain a seal bearing the registrant's name and registration number, and that such seal "shall be stamped on all plans, specifications, and reports by the registrant responsible for the accuracy and adequacy of such plans, specifications and reports, when filed with public authorities." Section 11(b) of the

Act makes it "unlawful for a registered engineer to affix or permit his seal to be affixed to any plans, specifications, or drawings for which he does not assume full responsibility for the adequacy and accuracy thereof." The statutory sanctions against unlawful use of his registered engineers' seal apply as a deterent to the individual professional engineer employed by a corporation to the same extent as though he were self-employed.

The registered engineer who misuses his seal is subject to having his license to practice revoked. In any event, in dealing with engineering corporations, the public is secure in the knowledge that a registered professional engineer must be in "responsible charge" of engineering work. The corporation, in reality, merely proffers the services of individual registered professional engineers.

Subparagraphs (5) and (6) of Section 8(b) of the Registration Act (Section 2-1808(b), (5) and (6), D. C. Code, 1951) are "grandfather clauses" which provide for the registration of professional engineers who were engaged in the practice of engineering prior to the effective date of the Registration Act. It will be noted that there is no "grandfather clause" in the Registration Act which pertains to engineering corporations in existence prior to the effective date of the Act. This is significant since those states which have enacted engineering registration acts in which corporations are specifically prohibited from engaging in the practice of engineering, notably the states of New York and Ohio, make detailed provision for the continued operation of

engineering corporations in existence prior to the effective date of the State Act. If Congress, in fact, intended to abolish all existing engineering corporations in the District of Columbia, this would have been a logical place so to state.

A. Long standing administrative determination is that engineers may be incorporated.

One of the basic aids available to a court in determining the construction of a statute is the contemporaneous and practical construction of the statute by the administrative agency or officer required to enforce its provisions. Coupled with this basic aid, and equally valuable, is the construction given a statute by the public generally or by those members of the public directly affected by the statute under construction. The following are but a few of the numerous cases which enunciate the foregoing principles.

In United States v. State Bank of North Carolina (1832), 31 U.S. (6 Pet.) 29, 38, 8 L. Ed. 308, the Supreme Court stated:

> "It is not unimportant to state that the construction which we have given to the terms of the act, is that which is understood to have been practically acted upon by the government, as well as by individuals, ever since its enactment. Many estates, as well of deceased persons as of persons insolvent who have made general assignments, have been settled upon the footing of its correctness. A practice so long and so general, would of itself furnish strong grounds for a liberal construction, and could not now be disturbed without introducing

> a train of serious mischiefs. We think the practice was founded in the true exposition of the terms and intent of the act; but if it were susceptible of some doubt, so long an acquiscence in it would justify us in yielding to it as a safe and reasonable exposition." (Emphasis supplied)

In Norwegian Nitrogen Products Co. v. United States (1933), 288 U.S. 294, 77 L. Ed. 796, 53 S. Ct. 350, the Supreme Court stated:

> "* * * True indeed it is that administrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction. True it also is that administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful. United States v. Moore, 95 U.S. 760, 763; Logan v. Davis, 233 U.S. 613; Brewster v. Gage, 280 U.S. 327, 336; Fawcus Machine Co. v. United States, 282 U.S. 375; Interstate Commerce Commn. v. N.Y., N.H. & H.R. Co., 287 U.S. 178. The practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new. Fawcus Machine Co. v. United States, supra." (Emphasis supplied)

In Hassett v. Welch (1938), 303 U.S. 303, 310, 82 L. Ed. 858, 58 S. Ct. 559, the Supreme Court stated:

> "Bearing in mind that the Resolution was prepared and its passage recommended by the Treasury, the administrative interpretation [by the Treasury] supports in uncommon measure the view that it was not intended to operate upon transfers completed prior to its passage." (Emphasis supplied)

In Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349, 351, 85 L. Ed. 881, 61 S. Ct. 580, the Supreme Court stated:

> "That for a quarter century the Commission has made no such claim is a powerful indication that effective enforcement of the Trade Commission Act is not dependent on control over intrastate transactions. Authority actually granted by Congress of course cannot evaporate through lack of administrative exercise. But just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred." (Emphasis supplied)

See also United States v. Farrar, 281 U.S. 624, 74 L. Ed. 1078, 50 S.Ct. 425.

1. Administrative Construction by the Board of Registration.

Section 8(n) of the Registration Act (Section 2-1808(n), D. C. Code, 1951) gives the Board of Registration power "To adopt, amend, rescind, promulgate, and enforce such administrative rules and regulations not inconsistent with this Act, as are deemed necessary and proper by the Board to carry into effect the powers conferred by this Act."

Section 8(o) of the Act (Section 2-1808(o), D. C. Code, 1951) gives the Board power "To enforce the provisions of this Act, to investigate for unauthorized and unlawful practice, * * *", to hold

hearings, to compel the attendance of witnesses, to issue subpoenas, and to administer oaths.

Section 8(p) of the Act (Section 2-1808(p), D.C. Code, 1951) gives the Board power to "suspend or revoke the certificate of registration of any professional engineer * * *".

The Board of Registration has never adopted or promulgated any rule or regulation regarding the incorporation of professional engineers or the employment by corporations of registered professional engineers. This factor is especially significant in light of the fact that there were an untold number of engineering corporations, domestic and foreign, engaged in business in the District of Columbia at the time the Registration Act became effective. It would have been incumbent upon the Board, had they so construed the law, to adopt some implementing rules or regulations to make known that corporate practice was forbidden by the Registration Act and to effect the prompt dissolution of, or cessation of engineering work by, these corporations. The Board has been in existence for over seven years. To this date there are engineering corporations, both domestic and foreign, practicing engineering in the District of Columbia (J.A. 7). Potomac Engineers, Inc. is illustrative. No evidence was submitted by respondents to show that any sanctions have ever been imposed or threatened against Potomac Engineers, Inc. or against any other engineering corporation in the District. Respondents did introduce "a certificate of the Professional

Engineers' Registration Board, to the effect that no corporation at any time has been registered by such Board at any time [sic] to engage in the profession of engineering or to practice as a professional engineer in the District of Columbia and, further, that no corporation, with the exception of Potomac Engineers, Inc. to which such registration was denied, has ever applied to said Board for such a certificate of registration" (J.A. 4-5). It is submitted that if the Board had ever taken any positive action against engineering corporations, or individual engineers practicing on behalf of corporations, evidence to this effect would have been included by respondents in the certificate they obtained from the Board. Judicial notice may be taken of the fact that Mr. James M. Gongwer, respondent in Docket Nos. 14210 and 14212 is a member of the Board of Registration.

2. Interpretation by the Corporation Counsel

Section 15 (a) and (c) of the Act (Section 2-1815 (a) and (c), D. C. Code, 1951) charges the Corporation Counsel with the duty of prosecuting "All violations of laws relating to the practice of engineering in the District of Columbia" and authorizes that officer "to apply for relief by injunction to restrain a person from the commission of any act which is prohibited by this Act."

In Adair v. District of Columbia, B.T.A. Docket No. 1228, affirmed, District of Columbia v. Adair, 90 U.S. App. D.C. 368, 196 F. 2d 603, and Ghent v. District of Columbia, D.C.T.C. Docket

No. 1397, 82 W.L.R. 494, 496, reversed, District of Columbia v. Ghent, 95 U.S. App. D.C. 103, 220 F. 2d 210, the Corporation Counsel took the affirmative position that engineers are not prohibited by law from incorporating in the District of Columbia. These cases involved professional engineers engaged in business in the District of Columbia. In Ghent v. District of Columbia, supra, the Tax Court stated:

> "The first question is whether the business of the petitioner is one which by law, custom or ethics can not be incorporated. This presents no serious difficulty in solution. The facts as found indicate that several engineering firms have been incorporated and are practicing engineering business, and are duly licensed so to do, in the District of Columbia. In the United States Tax Court case hereinafter cited, the taxpayers were incorporated engineering businesses. There is no legal obstacle to the incorporation of an engineering business. Certainly there is no ethical reason why it should not be done and the record discloses no custom indicating that such business can not be incorporated. For the reasons stated the Court holds that the business as conducted by the petitioner can be incorporated." (Emphasis supplied)

The question of the right of engineers, by law, to incorporate was referred to in passing, but was not specifically raised on appeal in either the Adair or Ghent cases. The Assessor, D.C., following the Adair and Ghent cases, has consistently taxed engineers under the unincorporated business franchise tax law involved herein. This is evidenced by the action taken in the instant cases.

There is nothing in the record to show whether the Corporation Counsel ever instituted a criminal prosecution against a corporation

under the Registration Act or sought to enjoin a corporation from engaging in the practice of engineering in the District. However, from the consistent position taken in Adair, Ghent, and the instant cases, it may fairly be presumed that the Corporation Counsel did not take such action. Mr. Vernon E. West, who was Corporation Counsel at the time this law was enacted and continued in office up to October, 1956, took part in drafting S. 3555, 81st Congress, 2nd Session, which later became the Professional Engineers' Registration Act, supra, and attended all hearings before the Senate and House District of Columbia Committees. (See Transcript of Hearings on H.R. 1188, 81st Congress, 2nd Session and on S. 3555, supra). As the officer charged with enforcing the law, his interpretation, as evidenced by the lack of action in relation to engineering corporations and engineers employed by corporations, should be given great weight. Likewise, inaction on the part of the Board can have only one possible interpretation: that the Registration Act does not preclude engineers from incorporating. This interpretation has come to be relied upon by the persons affected thereby "and could not now be disturbed without introducing a train of serious mischiefs". United States v. State Bank of North Carolina, supra.

3. Interpretation by the Public

The public, i.e., the engineers themselves, have not interpreted the Registration Act as prohibiting the incorporation of engineers. This is evidenced by the fact that, to this date, more than seven years after

the enactment of the Registration law, there are many engineering corporations, both domestic and foreign, engaged in the engineering business in the District of Columbia (J.A. 7). It cannot be presumed that all of these are knowingly and wilfully violating the law. Nor can the individual engineers employed by these corporations be presumed to be knowingly violating the law. In the Ghent case, the petitioner, a registered professional engineer, did not even claim that there was any law which prohibited engineers from incorporating, but insisted that engineering is a trade or business which by customs, or ethics, cannot be incorporated.

Volume 2, Sec. 5107, Sutherland, Statutory Construction, page 521, states:

> "One of the soundest reasons sustaining contemporaneous interpretations of long standing is the fact that reliance has been placed thereon by the public and those having an interest in the interpretation of the law."

In any event, if Congress had intended to abolish existing engineering corporations, and forbid the creation of new engineering corporations, it would have taken steps to correct this misinterpretation of the Registration Act. As the Supreme Court of the United States said in Norwegian Nitrogen Products Co. v. United States, supra, at 288 U.S. 313:

> "Acquiescence by Congress in an administrative practice may be an inference from silence during a period of years."

B. Similar statutes in other jurisdictions support the view that it was not the purpose of the Registration Act to prohibit engineers from incorporating.

Senate Report No. 1921, 81st Congress, 2d Session, which accompanied the Professional Engineers' Registration Act, states, in pertinent part, as follows:

> "The purpose of the bill is to require professional engineers to register in order to practice within the District of Columbia. * * *. All States in the Nation now have such laws, which are necessary to protect the public against incompetent practice in the profession." (Emphasis supplied)

Volume 3, §6105, Sutherland, Statutory Construction, 3rd Edition, page 162, states as follows:

> "Where the meaning of a statute is in doubt reference to legislation in other states and jurisdictions which pertains to the same subject matter, persons, things, or relations, may be of valuable significance. Despite the fact that the United States is subdivided into 49 separate legislative jurisdictions, a large amount, if not the bulk of statutory law to be found in each is based upon a similar legislative pattern. Therefore, the phraseology and language of similar legislation in other jurisdictions is deserving of special consideration not only in the interests of uniformity, but also for the purpose of determining the general policy and objectives of a particular course of legislation."

In view of the statement made in the Committee Report accompanying the act in question that all 48 States in the Nation now have such laws, it is particularly pertinent to look to the statutes of other jurisdictions to determine the overall intent of engineers' registration acts in regard to the question involved herein.

Over 30 states[2] have engineers' registration acts which specifically provide for the practice of engineering in the corporate form subject only to the requirement that various officers or persons in responsible charge of engineering work must be registered professional engineers. It is interesting to note that although the "purpose section" of each of the state statutes is substantially the same as Section 2-1803, supra, the vast majority of states permit the incorporation of registered professional engineers. This indicates quite clearly that there is nothing inherent in the practice or profession of engineering which would "prohibit a corporation, organized for the purpose, from employing licensed * * * engineers." Silver v. Lansburgh, supra, at page 79. As has been hereinbefore noted, the states of New York and Ohio have enacted registration laws which contain restrictive "grandfather clauses" indicating, of course, that new corporations may not be formed for the purpose of practicing engineering in these states.

Utilizing this aid to statutory construction, it is readily seen that a majority of the 48 states, under similar purpose clauses, did not consider it necessary to prohibit engineers from incorporating in

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2 For the convenience of the Court, counsel for petitioner are endeavoring to compile a compendium of the Professional Engineers' Registration Acts of the 48 states insofar as they relate to the right of engineers to incorporate. Counsel, with the approval of the court, expect to file this compendium prior to the date of oral argument.

order to fulfill the purpose of these registration acts. Since all of these state registration acts were enacted prior to the District of Columbia Registration Act and are on the statute books to this day, it may be fairly presumed that these states have found that in practice the formation of corporations by engineers for the practice of their profession does not defeat the purpose of the several registration acts.

In United States v. Farrar, 281 U.S. 624, supra, the Supreme Court of the United States had for decision the question whether the purchaser of intoxicating liquors, the sale of which was prohibited, was guilty of an offense under the National Prohibition Act. The Supreme Court pointed out that, prior to the adoption of the 18th Amendment, courts had been practically unanimous in holding that in the absence of an express statutory provision to the contrary the purchaser in such cases was guilty of no offense. The Court specifically stated that "* * * statutes to the contrary have been the rare exception". Thus, the Supreme Court has recognized the value of looking to other statutes on the same subject matter as an aid to statutory construction.

CONCLUSION

It is respectfully submitted that the decisions of the District of Columbia Tax Court in favor of respondents should be reversed.

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JOINT APPENDIX

JOINT APPENDIX

INDEX

	PAGE
Petition (Docket No. 1589)	1
Excerpt from Transcript of Proceedings	4
Findings of Fact and Opinion	5
Findings of Fact	6
Opinion	10
Decisions:	
Docket No. 1589	23
Docket No. 1590	24
Docket No. 1591	25
Docket No. 1592	27
Docket No. 1593	27

2 FILED FEB 8, 1957 DISTRICT OF COLUMBIA TAX COURT

WM. K. KARSUNKY, FRANK H. WELLER and THEODORE J. GOOCH, a partnership doing business as KARSUNKY, WELLER & GOOCH,	)	
Plaintiffs,	)	
vs.	)	DOCKET NO. 1589
DISTRICT OF COLUMBIA,	)	
Respondent.	)	

PETITION

1. Petitioners, William K. Karsunky, Frank H. Weller and Theodore J. Gooch are, and were during the taxable years hereinafter set forth, partners engaged in the practice of the profession of engineering and doing business as Karsunky, Weller and Gooch at 2011 K Street, N.W., Washington, D. C.

2. Said petitioners appeal from the denial of claims for refund of taxes. Jurisdiction of this Court is invoked under the provisions of D. C. Code Title 47, Section 1593.

3. The taxes in controversy are District of Columbia unincorporated business franchise taxes for the years and in the amounts set forth hereinafter in this paragraph and were paid to the Collector of Taxes for the District of Columbia on the dates as also hereinafter set forth:

Year	Amount	Date Paid Collector
1952	$2,132.56	April 21, 1953
1953	1,565.10	April 8, 1954
1954	1,025.96	April 27, 1955
"	1,025.96	September 2, 1955

4. Petitioners filed with the Assessor of the District of Columbia claims for the refund of said taxes for each of the said years and in the 3 amounts as above set forth, copies of which claims for refund are annexed hereto and made a part hereof, marked Exhibit A. The grounds upon which each of said claims for refund are based are the same as those set forth in this petition.

5. Said claims for refund for each of said years were disallowed by said Assessor by letter dated December 3, 1956, copy of which is annexed hereto, made a part hereof and designated Exhibit B.

6. The denial of said claims for refund was erroneous and based upon the following errors:

(a) Said Assessor failed and refused to recognize that petitioners during the years for which said taxes were paid were practicing a business or profession which by law cannot be incorporated.

(b) Because of the above error set forth in sub-paragraph (a) above, the Assessor failed and refused to recognize that petitioners were

not subject to said unincorporated business franchise tax imposed by Title 8 of the District of Columbia Income and Franchise Tax Act of 1947, as amended.

7. The facts upon which petitioners rely as the basis of these proceedings are as follows:

(a) During the entire calendar years of 1952, 1953, and 1954 petitioners and each of them were professional engineers as defined by D. C. Code Title 2, Section 1802(b) and engaged as partners in the practice of engineering as defined by Code Title 2, Section 1802(a).

(b) Each of said petitioners were registered as an engineer under the provisions of Title 2, Section 1804 of the Code of the District of Columbia, and was in possession of an unrevoked certificate of registration

4 during all of the calendar years 1952, 1953, and 1954.

(c) Said profession of engineering is one which by law cannot be incorporated in the District of Columbia.

(d) If said profession could be incorporated in the District of Columbia or elsewhere, a corporation so formed for the purpose of engaging in the profession, trade or business of engineering would not be allowed to practice or engage as such in the District of Columbia. Said profession is one which under the laws of the District of Columbia could not function practically as an economic unit under the corporate form, or as such enjoy the privilege for which said taxes are imposed, even if the bare legal

right to form such corporation existed.

WHEREFORE, the premises considered, petitioners pray that this Court may hear this proceeding and enter judgment herein for the petitioners for the refund of the taxes paid as aforesaid for each of the years 1952, 1953, and 1954 in the total sum of $5,749.58 together with interest thereon as provided by law, and for such other relief as may seem just and proper.

KARSUNKY, WELLER AND GOOCH

By /s/ Wm. K. Karsunky
Partner

(The petitions in Docket Nos. 14210, 14211, 14212 and 14213 are substantially the same as the foregoing petition in Docket No. 14209)

* * *

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS

20 MR. TOBRINER: I have two items of evidence. I'm not sure they need be introduced as evidence but I would like to proffer them. One is a certificate of the Department of Occupations and Professions, namely, a certificate of the Professional Engineers Registration Board, to the effect that no corporation at any time has been registered by such Board at any time to engage in the practice of engineering or to practice as a professional engineer in the District of Columbia and, further, that no corporation, with the exception of Potomac Engineers, Inc., to which such

registration was denied, has ever applied to said Board for such a certificate of registration.

* * *

60 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT

FINDINGS OF FACT AND OPINION

The above entitled proceedings were consolidated for hearing and disposition, since all of them involved the matter of the taxability of the business of professional engineers as unincorporated business under the District of Columbia Income and Franchise Tax Act of 1947 (Chapter 15 of Title 47, District of Columbia Code, 1951 Edition). The petitioners claim that they are exempt from franchise taxes because the profession of engineering cannot be carried on in the District of Columbia by a corporation, and that, therefore, for all practical purposes, their profession is "one which by law, customs, or ethics cannot be incorporated" within the meaning of Section 1, Title VIII of the Act (Section 47-1574, D. C. Code). The respondent counters by contending that, while it is true that a corporation cannot engage in the profession of engineering, there is nothing to prevent the organization of a corporation containing engineers' purposes and powers; and that, therefore, under the letter of the Act, the petitioners are unincorporated businesses and liable to franchise taxation under the Act.

Findings of Fact

1(a) All of the petitioners are individuals and professional engineers. During the taxable years involved the petitioners were, and still are practicing their profession in the District of Columbia.

(b) It was stipulated by the parties at the hearing herein, and the Court so finds, as follows:

> "It is stipulated by and between counsel for the petitioners and respondent in cases 1589 to 1593, both inclusive, that Paragraph 7, subsections (a) and (b) of each
> 61 petition be taken as true, namely, that the petitioners, with the exception of Marshall in case 1592, during years for which refunds are being sought, were professional engineers as defined in D.C. Code, Title 2, Section 1802(d); were engaged during those years in the practice of engineering as defined by D. C. Code, Title 2, Section 1802(a); were registered as engineers under the provisions of Title 2, Section 1804; and during said years were in possession of unrevoked certificates of registration."

(c) The person referred to as "Marshall" was Thomas W. Marshall, formerly a member of the partnership of which the petitioner, James M. Gongwer, is the surviving partner. Thomas Marshall died before his registration.

2(a) The petitioners, Wm. K. Karsunky, Frank H. Weller and Theodore J. Gooch, are partners of the firm of "Karsunky, Weller & Gooch."

(b) The petitioners, Stewart H. Beall and James W. Lemay, are partners of the firm of "Beall & Lemay."

(c) The other petitioners are practicing their profession as individuals.

3(a) The parties have stipulated, and the Court finds as follows:

> "It is hereby stipulated by and between counsel for petitioners and counsel for respondent in each of the above-entitled cases that, during the tax years involved and up to the present time, there were of record in the office of the Superintendent of Corporations of the District of Columbia, engineering corporations incorporated under the laws of the District of Columbia for the purpose of engaging in the practice of engineering and in rendering engineering services in the District of Columbia.
>
> "It is further stipulated and agreed that, during the tax years involved and up to the present time, there were of record in the office of the Superintendent of Corporations of the District of Columbia, engineering corporations organized under the laws of the various states for the purpose of engaging in the practice of engineering and in rendering engineering services, and which have qualified to do business in the District of Columbia under the laws of the District of Columbia.

62 "Petitioners reserve the right to object to this stipulation on the grounds of materiality."

(b) No corporation has ever at any time been registered by the Board of Registration for Professional Engineers, Department of Occupations and Professions, Government of the District of Columbia, nor has any corporation at any time been issued a certificate of registration by such Board authorizing the corporation to engage in the practice of engineering or to practice as a professional engineer in the District of Columbia.

(c) No corporation, with the exception of Potomac Engineers, Incorporated, to which registration was denied, has ever applied to the aforesaid Board of Registration for Professional Engineers for a certificate of registration authorizing it to engage in the practice of engineering or to practice as a professional engineer in the District of Columbia.

4(a) Docket No. 1589. The petitioners, Wm. K. Karsunky, Frank H. Weller and Theodore J. Gooch, composing the firm of Karsunky, Weller & Gooch, filed with the Assessor on January 4, 1956, claims for refund of franchise taxes paid by the partnership for the years, in the amounts and on the dates as follows:

Year	Amount	Date Paid
1952	$2,132.56	April 21, 1953
1953	1,565.10	April 8, 1954
1954 (lst half)	1,025.96	April 27, 1955
1954 (2nd half)	1,025.96	Sept. 2, 1955

(b) The aforementioned claims for refund were denied by the Assessor on December 3, 1956.

5(a) Docket No. 1590. The petitioner, James M. Gongwer, filed with the Assessor on November 17, 1955, claims for refund of franchise taxes paid by him for the years, in the amounts and on the dates as follows:

63

Year	Amount	Date Paid
1952	$109.89	April 15, 1953
1953	905.31	April 15, 1954
1954	1,881.08	April 27, 1955

(b) The aforementioned claims for refund were denied by the Assessor on December 31, 1956.

6(a) Docket No. 1591. The petitioner, Bernard F. Locraft, filed with the Assessor on November 17, 1955, claims for refund of franchise taxes paid by him for the years, in the amounts and on the dates as follows:

Year	Amount	Date Paid
1952 (1st half)	$423.58	April 16, 1953
1952 (2nd half)	423.57	Oct. 21, 1953
1953 (1st half)	222.47	April 13, 1954
1953 (2nd half)	222.47	Oct. 11, 1954
1954 (1st half)	200.37	April 21, 1955
1954 (2nd half)	200.00	Oct. 14, 1955

(b) The aforementioned claims for refund were denied by the Assessor on December 3, 1956.

7. Docket No. 1592. The petitioner, James M. Gongwer, is the surviving partner of the firm of Marshall & Gongwer, Thomas W. Marshall, the other partner, having died on March 31, 1952. The petitioner, as such surviving partner, on November 17, 1955, filed with the Assessor a claim for refund of franchise taxes for the period from January 1 to March 31, 1952, in the amount of $852.24, paid April 15, 1953. On December 3, 1956, the Assessor denied the claim for refund.

8(a). Docket No. 1593. The petitioners, Stewart H. Beall and James W. Lemay, as partners in the firm of Beall & Lemay, filed with

the Assessor on January 18, 1956, claims for refund of franchise taxes paid by the firm for the years, in the amounts and on the dates as follows:

Year	Amount	Date Paid
1952	$1,700.84	April 6, 1953
1953 (1st half)	1,262.13	April 21, 1954
1953 (2nd half)	1,262.13	Jan. 12, 1955
1954 (1st half)	1,068.38	April 26, 1955
1954 (2nd half)	1,068.38	Oct. 5, 1955

64 (b) The aforementioned claims for refund were denied by the Assessor on December 3, 1956.

9. These proceedings were filed February 8, 1957.

Opinion

There is no dispute about the facts in this case, nor as to the correct computation of the franchise taxes involved. There is but a sole question of law, namely, is the profession of a professional engineer an "unincorporated business" within the meaning of the District of Columbia Income and Franchise Tax Act of 1947, when no one can practice engineering in the District of Columbia without a license, and a corporation cannot be licensed under the law? The answer to that question requires the examination and consideration of the laws relating to the franchise tax and to the practice of the profession of engineering as well as to the decisions of our courts bearing upon those subjects.

The Income and Franchise Tax Act has been codified as Chapter 15 of Title 47, District of Columbia Code, 1951 Edition. Reference will

hereinafter be made to the Code sections.

Section 47-1574b imposes a franchise tax on all unincorporated businesses for "the privilege of carrying on or engaging in any trade or business within the District." The definition and limitation of the term "unincorporated business" is found in Section 47-1574, which is in the language following:

> "For the purposes of this article (not alone of this title) and unless otherwise required by the context, the words 'unincorporated business' mean any trade or business conducted or engaged in by any individual, whether resident or nonresident, statutory or common law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee assignee, or to any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under sections 47-1571 to 47-1571a. The words 'unincorporated business' do not include any trade or business which by law, customs, or ethics cannot be incorporated or any trade or business in which more than 60 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor. (July 16, 1947, 61 Stat. 345, ch. 258, Art. 1, Title VIII, § 1.) (Emphasis supplied)

The question which naturally presents itself is this: Is the practice of professional engineering one "which by law, customs, or ethics cannot be incorporated?" If it is, denials of the claims for refund of franchise taxes filed by the several petitioning professional engineers

were erroneous and must be reversed. Otherwise the denials must be affirmed.

Section 2-1804[1] of the Code throws some light upon the question and may solve it. The section reads:

> "Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, or by verbal claim, sign, advertisement, letterhead, card, or in any other way, represent himself to be a professional engineer, or through the use of the title including the word 'engineer' or words of like import, or any other title, imply that he is a professional engineer, unless such person is registered under the provisions of this chapter. (Sept. 19, 1950, 64 Stat. 855, Ch. 953, § 4)."

66 It is stipulated by the parties that the petitioners were engaged during the taxable years in the practice of engineering as defined by Section 2-1802(a) of the Code.

A corporation, Potomac Engineers, Inc., applied to the Board of Registration for Professional Engineers[2] for a certificate of registration as a professional engineer. The application was denied by the Board.

---

(1) Section 4, Professional Engineers Registration Act, 64 Stat. 854, ch. 953.

(2) Created by Section 2-1805 of the Code to administer Chapter 18 of Title 2 relating to professional engineers.

No other corporation has ever applied for registration and none has been issued a certificate of registration. The Potomac Engineers, Inc., feeling apparently, that it was entitled to registration, filed a suit in the United States District Court for the District of Columbia to procure a mandatory injunction requiring the Board to issue the certificate. The injunction was denied by the District Court with the memorandum following: (Potomac Engineers, Inc. v. Walser, et al, 127 F. Supp. 41)

> "It is clear to the Court that the statute must be construed by its very terms as inapplicable to corporations and applicable to natural persons only.
>
> "It may be added that traditionally only natural persons can practice a learned profession, because only natural persons can be charged with the moral responsibility that the practice of a learned profession required. While traditionally the learned professions have been regarded as the law, medicine and the ministry, I think that engineering, too, may properly be included in that class.
>
> "The court concludes that the Board was correct in taking the position that a corporation is not entitled to registration as a professional engineer."

On appeal to the United States Court of Appeals for the District of Columbia Circuit the decision of the District Court was affirmed, per curiam, Potomac Engineers, Incorporated v. Walser, et al, 96 U. S. App. D.C. 64, 223 F. 2d 356.

67 The Court is of the opinion that the Potomac Engineers case establishes the principle that the practice of professional engineering in

the District of Columbia by a corporation is unlawful. That being so, the Court believes that the practice of professional engineering is "one which by law, customs or ethics cannot be incorporated" within the meaning of the Income and Franchise Tax Act. To hold otherwise would defeat the purpose of the Professional Engineers Registration Act as well as the Income and Franchise Tax Act. All laws should receive sensible construction so as to effectuate legislative intention. Where the purpose of a statute can be achieved only by extending the operation of the language it should be extended. Manoukian, et al v. Tomasian, 99 U.S. App. D.C. 57, 237 F. 2nd 211, 75 W.L.R. 73, and foot notes; United States v. Kirby, et al., 74 U.S. 482, 19 L. Ed. 278; Leon Turnipseed, 27 T. C. No. 91 (February 8, 1957); Robert S. Bassett, 26 T. C. No. 77 (June 21, 1956).

Indeed, the Commissioners in the regulations pertaining to Income and Franchise Tax Act have construed the prohibition to practice a profession by a corporation as a legal obstacle to incorporation of the practice of the profession. In Section 8 1(c) (2) of these regulations we find this language: "Title 2, District of Columbia Code 1951 edition prohibits the incorporation of certain occupations, for example, dentistry, dental surgery, podiatry, and certified public accountancy." The provisions of the Code relating to the practice of those occupations are essentially similar to that relating to the practice of professional engineering. Section 2-316 relating to dentists and dental surgeons reads as follows:

68 "On and after July 2, 1940, it shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery under any name except his proper name, which shall be the same used in the license granted to him as a dentist, as provided for in this chapter; and unlawful to use the name of any company, association, corporation, trade name, or business name in connection with the practice of dentistry as defined in this law. Any person convicted of a violation of the provisions of this section shall be fined for the first offense not more than $200, and upon a second or any subsequent conviction thereof, by a fine not to exceed $500, and upon conviction his license may be suspended or revoked. (July 2, 1940, 54 Stat. 721, Ch. 513, § 16)." (Emphasis supplied.)

In respect of podiatrists Section 2-707 provides:

"The District Court of the United States for the District of Columbia may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to said Court. * * *

"(f) That such holder is guilty of unprofessional conduct.

"The following acts on the part of a podiatrist are hereby declared to constitute unprofessional conduct; * * *

"(4) Practicing podiatry under a false or assumed name or corporate name other than a partnership name containing the name of the partners, or any name except his full proper name which shall be the name used in his license granted by the board." (Emphasis supplied)

The section that relates to public accountants is Section 2-901. It is in the language following:

"Any person who has received from the Board of Accountancy, hereinafter created, a certificate of his qualifications to practice as a public accountant shall

> be known and styled as a 'Certified Public Accountant', and no other person, and no partnership all of the members of which have not received such certificate, and no corporation shall assume such title or the title of 'certified accountant' or the abbreviation 'C.P.A.' or any other words, letters, or abbreviations tending to indicate that the person, firm, or corporation so using the same is a Certified Public Accountant. (Feb. 17, 1923, 42 Stat. 1261, ch. 94, § 1.)" (Emphasis supplied)

69 Under the foregoing regulation dentists, dental surgeons, podiatrists and public accountants have been exempted and their respective occupations have been considered as one which by law cannot be incorporated and therefore without the class of unincorporated businesses. The Court believes that the Commissioners have correctly interpreted the law relating to those particular professions on the broad theory of sensible construction, but is hard put to understand the discrimination practiced against professional engineers.

It is interesting to note that the Commissioners have approved an opinion by the Corporation Counsel holding that the practice of architecture is not an unincorporated business under a section of the Code in substance identical with that dealing with professional engineers. (CON D. C. Tax Reports 10-074).

By Act of Congress approved September 7, 1950, the Architects' Registration Act was amended to provide among other things as follows:

> "* * * no firm, company, partnership, association, corporation, or other similar organization shall be registered as an architect. Only individuals shall be

> registered as architects but a number of architects constituting a firm may use the collective title 'Architects' or 'Registered Architects.' (Emphasis supplied)

The law prior to the amendment had read:

> "A corporation whose prior business, as shown by its charter, is the practice of architecture may apply for and obtain a certificate of registration, provided all of its executive officers and directors are registered architects."

The Assessor of the District of Columbia having previously obtained a ruling of the Corporation Counsel that under the prior Act architects were not exempt from the tax (CCO Opinion 785.3, Berla, Julian E., approved February 3, 1948), sought the opinion of the Corporation 70 Counsel as to whether registered architects by virtue of the Amendment of 1950 became exempt. In the course of the opinion the Corporation Counsel stated:

> "It becomes necessary to determine, therefore, whether under the terms of said Act a corporation may practice architecture as a registered architect." (Emphasis supplied)

and in conclusion stated:

> "We conclude, therefore, that registered architects, as such, are exempt from liability of the District of Columbia unincorporated business tax."

The opinion was approved by the Commissioners, April 17, 1951, and reference thereto may be found in CCH D. C. Tax Reporter 10-074.

The decisions in Silver v. Lansburgh, 72 App. D.C. 77, 111 F. 2nd

518, and Ghent v. District of Columbia, 95 U. S. App. D. C. 103, 220 F. 2nd 210, 83 W.L.R. 784, upon which the respondent relies, are not in the opinion of the Court controlling to the extent of requiring a ruling different from that hereinbefore stated. The Silver case was decided 10 years before the enactment of the Professional Engineers Registration Act. Neither the Commissioners nor the Corporation Counsel consider the Silver case important or controlling because the former have ruled in the regulation that accountancy is not an unincorporated business, and the letter in the opinion has held the same in respect of the practice of architecture, notwithstanding there is found in the opinion of the Silver case the following:

> "There is no more reason to provide a corporation organized for the purpose, from employing licensed optometrists, than there is to prohibit similar employment of accountants, architects or engineers."

71 And, lastly, the inferential ruling in the Silver case that engineering is not a "learned profession" is repudiated or, at least, overruled in the Potomac Engineers, Inc. case.

The Ghent case was decided by this Court on February 16, 1954. Judge Holtzoff's opinion in the Potomac Engineers, Inc. case was not rendered until December 22, 1954, and the per curiam decision of the United States Court of Appeals was not handed down until June 9, 1955. This Court has always regarded the decisions of the United States District

Court extremely persuasive, even if not binding, and it is highly likely that the decision in the Ghent case, holding that the practice of engineering could be incorporated within the meaning of the Income and Franchise Tax Act, would never have been entered, if the decision in the Potomac Engineers, Inc. case had then been rendered. And, of course, it is certain that this Court would not have so ruled, if the decision of the United States Court of Appeals in the Potomac Engineers, Inc. case had then been handed down. It should be here observed that the question of incorporation of the practice of professional engineering was not raised, briefed or considered in the United States Court of Appeals in the Ghent case. That Court's decision was restricted solely to the question whether the engineer involved had produced more than 80% of the gross income of his business. And, lastly, it must be remembered that the Ghent case was decided by the United States Court of Appeals on February 24, 1955, and the Potomac Engineers, Inc. case on June 9, 1955.

The foregoing observations are based upon the assumption, based upon an assertion by counsel for respondent, that while a corporation may not practice professional engineering, such practice, strictly speaking, can be organized as a corporation, an assumption, however, which the
72 Court believes to be incorrect. The Court is of the opinion that a corporation designed to engage in the practice of professional engineering cannot lawfully be organized under the laws of the District of Columbia.

Under the plain language of the statute it would be unlawful for a corporation to engage in the profession of engineering in the District of Columbia. And such was the understanding of Congress. Speaking of the Professional Engineers Registration Act, Chairman McMillan of the District House Committee (96th Congressional Record, September 13, 1950, page 14832) said:

> "* * * in meetings held before the Committee on the District of Columbia on this bill (H. R. 1188) it was not the understanding of the Committee that a corporation should either practice engineering or be licensed to practice engineering."

If a corporation were organized for the purpose and object of engaging in the practice of engineering, it would be organized for an unlawful purpose. There seems to be no escape from this conclusion in the light of the decisions of the United States District Court and Court of Appeals in the Potomac Engineers, Inc. case, and the intention of Congress in respect to the practice of professional engineering in the District of Columbia. Section 29-903 of the District of Columbia Code, 1951 Edition, Supp. V (Section 3, District of Columbia Business Corporation Act, approved June 8, 1954), provides that "Corporations for profit may be organized under this Chapter for any lawful purpose * * *"; and Section 29-944 states that "Nothing in this Chapter shall be interpreted to authorize a corporation to do any act in violation of * * * the statutes relating to the District of Columbia * * *".

73 Section 29-935(b) of the Code provides:

> "The Commissioners[3] may transfer any or all of the functions vested in them by this chapter to any agent designated by them pursuant to the provisions of this chapter, or to any office or agency established by them pursuant to Reorganization Plan numbered 5 of 1952."

Pursuant to Section 29-935(b) the Commissioners transferred the functions of administration and enforcement to the Superintendent of Corporations[4]. Such official in the performance of his duties has interpreted Section 29-903 (correctly, in the opinion of the Court) so as to prevent the organization of a corporation for the object and purpose of engaging in a business, which, under the laws of the District of Columbia, is forbidden to a corporation. In accord with such interpretation the Superintendent of Corporations has refused for filing and incorporation a certificate of incorporation signed by a number of members of the medical profession for the purpose of engaging in the practice of medicine, although there is nothing in the corporation laws to prevent such organization, except the above quoted language of Section 29-903, and there even is no statute specifically providing, as does the pertinent section in

---

(3) The Board of Commissioners are charged in the Act with the administration and enforcement of the Incorporation Act. See Section 935(a).

(4) The Honorable Alfred Goldstein.

the Professional Engineers Registration Act, that a corporation cannot engage in the practice of that profession. The Court is of the opinion that the Superintendent of Corporations in compliance with the intent of Section 29-903 should refuse to accept for filing, recordation and organization a certificate of incorporation filed by a group of persons for the purpose of engaging in the practice of professional engineering. The Court believes that such official would so act, if any such certificate of incorporation were presented to his office for filing, etc.

74 The Court is aware that there are several corporations, both local and foreign, with offices in the District of Columbia, and having in their corporate names the words "Engineering", "Engineers" or words of like import, and perhaps some or all of them give the impression or hold out that they can engage in the practice of engineering; and that maybe some of them do so engage. If a corporation should do so, it would violate the law and subject itself to criminal penalty. Moreover, it might be observed that many so-called "engineering" corporations are no more than construction companies, which euphemistically include the word "Engineering" in the corporate name.

For the reasons stated the Court holds that the practice of professional engineering by the petitioners was not "unincorporated business" within the meaning of the Income and Franchise Tax Act; that the franchise taxes here involved were erroneously paid by the petitioners; that the

denial of the claims for refund was erroneous and must be reversed; and that the petitioners are entitled to refund of the taxes involved, with interest thereon at the rate of 4 per centum from the date of the filing of the claims for refund to the date of the payment of the refunds.

Decisions will be entered for petitioners.

/s/Jo. V. Morgan
Jo. V. Morgan
Judge

* * *

75 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT
DOCKET NO. 1589

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing of said petition, it is by the Court this 9th day of September, 1957,

ADJUDGED and DETERMINED that a franchise tax for the year 1952 in the amount of $2,132.56 was erroneously paid by the petitioners; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 4, 1956, to date of payment of the refund;

FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1953 in the amount of $1,565.10 was erroneously paid by the petitioners; that the denial by the Assessor of a claim for refund thereof was

erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 4, 1956, to date of payment of the refund.

76 FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1954 in the amount of $2,051.92 was erroneously paid by the petitioners; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 4, 1956, to date of payment of the refund.

/s/Jo. V. Morgan
Jo. V. Morgan
Judge

* * *

88 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT
DOCKET NO. 1590

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing of said petition, it is by the Court this 9th day of September, 1957

ADJUDGED and DETERMINED that a franchise tax for the year 1952 in the amount of $109.89 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof,

with interest thereon at the rate of 4 per centum per annum from November 17, 1955, to date of payment of the refund.

FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1953 in the amount of $905.31 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955;

89 FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1954 in the amount of $1,881.08 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955.

/s/ Jo. V. Morgan
Jo. V. Morgan
Judge

* * *

101 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT
DOCKET NO. 1591

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing

of said petition, it is by the Court this 9th day of September, 1957,

ADJUDGED and DETERMINED that a franchise tax for the year 1952 in the amount of $847.15 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955, to date of payment of the refund.

FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1953 in the amount of $444.94 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955, to date of payment of the refund.

102 FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1954 in the amount of $400.37 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955, to date of payment of the refund.

Jo. V. Morgan

Jo. V. Morgan
Judge

* * *

113 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT
DOCKET NO. 1592

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing of said petition, it is by the Court this 9th day of September, 1957,

ADJUDGED and DETERMINED that a franchise tax for the period from January 1 to March 31, 1952, in the amount of $852.24 was erroneously paid by the petitioner; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 17, 1955, to date of payment of the refund.

/s/Jo. v. Morgan
Jo. V. Morgan
Judge

* * *

125 FILED SEP 9 1957 DISTRICT OF COLUMBIA TAX COURT
DOCKET NO. 1593

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing of said petition, it is by the Court this 9th day of September, 1957,

ADJUDGED and DETERMINED that a franchise tax for the year 1952 in the amount of $1,700.84 was erroneously paid by the petitioners;

that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4°/o per annum from January 18, 1956, to date of payment of the refund.

FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1953 in the amount of $2,524.26 was erroneously paid by the petitioners; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 18, 1956, to date of payment of the refund.

126 FURTHER ADJUDGED and DETERMINED that a franchise tax for the year 1954 in the amount of $2,136.76 was erroneously paid by the petitioners; that the denial by the Assessor of a claim for refund thereof was erroneous and is hereby reversed; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 18, 1956, to date of payment of the refund.

/s/Jo. V. Morgan
Jo. V. Morgan
Judge

COMPENDIUM OF PROFESSIONAL ENGINEERS' REGISTRATION LAWS

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 14,209-10-11-12-13

DISTRICT OF COLUMBIA,

Petitioner,

v.

WM. K. KARSUNKY, et al., a partnership doing business as Karsunky, Weller & Gooch, et al.,

Respondents.

United States Court of Appeals
For the
District of Columbia Circuit
FILED
MAY 5 1958
Joseph W. Stewart
CLERK

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INDEX

	PAGE
Classification	1
State Laws:	
Alabama	3
Arizona	3
Arkansas	4
California	4
Colorado	6
Connecticut	6
Delaware	6
Florida	6
Georgia	7
Idaho	7
Illinois	7
Indiana	7
Iowa	8
Kansas	8
Kentucky	9
Louisiana	9
Maine	9
Maryland	10
Massachusetts	10
Michigan	10
Minnesota	11
Mississippi	11
Missouri	11
Montana	12
Nebraska	13
Nevada	13
New Hampshire	13
New Jersey	14
New Mexico	14
New York	16
North Carolina	16
North Dakota	17

PAGE

State Laws Continued:

Ohio 17
Oklahoma 18
Oregon 18
Pennsylvania 18
Rhode Island 19
South Carolina 19
South Dakota 19
Tennessee 20
Texas 20
Utah 21
Vermont 21
Virginia 21
Washington 21
West Virginia 21
Wisconsin 22
Wyoming 22

CLASSIFICATION

Category 1. States which permit corporate practice of engineering:

Alabama	Nebraska
Arizona	Nevada
Arkansas	New Jersey
California	New Mexico
Colorado	North Carolina
Florida	Oklahoma
Georgia	Oregon
Indiana	Pennsylvania
Iowa	South Dakota
Maine	Tennessee
Massachusetts	Texas
Michigan	Utah
Minnesota	Vermont
Mississippi	West Virginia
Missouri	Wisconsin
Montana	Wyoming

Category 2. States which restrict the corporate practice of engineering to those corporations in existence prior to the effective date of the Professional Engineers' Registration Act:

New York	Ohio

Category 3. States which have no specific provision relating to the corporate practice of engineering:

Connecticut	Maryland
Delaware	New Hampshire
Idaho	North Dakota
Illinois	South Carolina
Kansas	Virginia
Louisiana	Washington

Category 4. States which have no specific provision relating to the corporate practice of engineering but which prohibit registration of corporations:

Kentucky	Rhode Island

ALABAMA

Title 46, Section 145, Code of Alabama, 1940 (1955 Cumulative Pocket Part) provides:

> "§145. Firms, partnerships, and corporations.--The practice of engineering or land surveying is a professional service, admission to which shall be determined upon a basis of individual personal qualifications. No firm, company, partnership or corporation can be registered. A firm, company, partnership or corporation may engage in the practice of professional engineering or land surveying in this state; provided the person or persons connected with such firms, companys, partnerships or corporations, acting in a professional capacity or in responsible charge of the practice of professional engineering or land surveying, is or are registered as herein required, or is or are otherwise authorized to practice as provided in section 147 of this title."

ARIZONA

Title 32, Section 32-141, Arizona Revised Statutes Annotated, 1956, provides:

> "§32-141. Firm or corporate practice
>
> "No firm or corporation shall engage in the practice of architecture, assaying, geology, engineering or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation. The name of said registrant shall appear whensoever the firm name is used in the professional practice of the firm or corporation."

ARKANSAS

Section 71-1019, Arkansas Statutes 1947, Annotated (1957 Replacement), provides:

> "71-1019. Engineers required to register--Exceptions.--No person, unless registered under the present law, shall hereafter practice or offer to practice engineering unless such person has been registered as provided in this Act [§§71-1019-71-1024], except that:
>
> * * *
>
> "(5) A firm, association, partnership or corporation may not engage in the practice of engineering as a profession except through its officers, agents or employees and then not unless one of the owners or incorporators is a registered engineer and unless the practice of engineering as engaged in is done under the supervision and direction of a registered engineer; provided that either a firm, association, partenrship [partnership] or corporation may engage in the practice of engineering with relation to its own property or business so long as such engineering practice is done under the supervision of a registered engineer."

CALIFORNIA

Section 6738, Business and Professions Code, West's Annotated California Codes, provides:

> "§6738. Group practice. (a) This chapter does not prohibit one or more civil engineers from practicing or offering to practice civil engineering through the medium of a partnership, firm, or corporation; provided:
>
> "(1) A civil engineer is the partner, member, or directing officer in charge of the engineering practice of the partnership, firm, or corporation.

"(2) All civil engineering plans, specifications, and reports are prepared by or under the direct supervision of a registered civil engineer, who shall sign or stamp with his seal such plans, specifications, and reports.

"(3) The partnership, firm or corporate name shall not contain the name of any person who is either not registered by the board in a branch of professional engineering, or as an architect; provided, that any holding out by such partnership, firm, or corporation of any individual or individuals to the public as a member, or members, of such partnership, firm, or corporation, other than by the use of the name or names of such individual or individuals in the partnership, firm, or corporate name, shall clearly and specifically designate the license statutes of such individual or individuals.

"(b) Nothing herein shall authorize the offering to practice or the practice of civil engineering by any person, either as a member, officer or employee of any partnership, firm, or corporation, who is not a registered civil engineer.

"(c) This chapter does not prevent or prohibit an individual, firm, company, association, or corporation engaged in any line of business other than the practice of civil engineering from employing a registered civil engineer to perform civil engineering services incidental to the conduct of their business.

"(d) The provisions of this section shall not apply to, or prevent the use of the name of, any partnership, firm, or corporation engaged in rendering civil engineering services which was lawfully in existence on September 30, 1947; provided, all civil engineering plans, specifications, and reports are prepared by or under the direct supervision of a registered civil engineer, who may be a member of the firm, or a permanent employee of the partnership, firm, or corporation; provided further, that all civil engineering plans, specifications and reports shall be signed by or stamped with the seal of the registered civil engineer in charge of the preparation of the same."

COLORADO

Article 1, Section 51-1-18, Colorado Revised Statutes, 1953, Annotated, provides:

> "51-1-18. Corporations-partnerships-exemptions--. A corporation or partnership may engage in the practice of professional engineering in this state, provided the persons connected with such corporation or partnership in charge of the designing or supervision which constitute the practice are registered as required of engineers by this article. The same exemption shall apply to corporations and partnerships as apply to individuals under this article."

CONNECTICUT

Chapter 225, Section 4621, et seq., General Statutes of Connecticut, 1949.

> No specific provision relating to the corporate practice of engineering.

DELAWARE

Title 24, Section 2701, et seq., Delaware Code Annotated, 1953.

> No specific provision relating to the corporate practice of engineering.

FLORIDA

Title XXX, Section 471.06, Florida Statutes Annotated, 1951, provides:

> "471.06 Corporations, firms and partnerships
>
> "A corporation, firm or partnership may engage in the practice of professional engineering in this state provided that one or more of the principal officers of said corporation or firm, or members of said partnership, are registered professional engineers under this chapter, and further

provided that said practice shall be carried on directly by professional engineers duly registered under this chapter."

GEORGIA

Title 84, Section 84-2135, Code of Georgia Annotated, 1955 Revision, provides:

"§84-2135. Practice by partnership, corporations or association.--A firm, corporation, copartnership, or an association may engage in the practice of professional engineering or land surveying in the State: Provided only such practice is carried on under the direction of professional engineers or land surveyors respectively, who are registered in this State."

IDAHO

Title 54, Section 54-1201, et seq., Idaho Code, 1947.

No specific provision relating to the corporate practice of engineering.

ILLINOIS

Chapter 48 1/2, Illinois Revised Statutes 1957.

No specific provision relating to the corporate practice of engineering.

INDIANA

Section 63-1534, Burns Indiana Statutes Annotated, 1951 Replacement (1957 Cumulative Pocket Supplement), provides:

"63-1534. Registration certificates issued to individuals only -- partnership, firm or corporation act through individual.- A registration certificate for a professional engineer or a land surveyor may be issued only to an individual person. No partnership, firm, or

corporation, doing business in the state of Indiana, may be engaged in the practice of professional engineering, or land surveying, unless such practice is carried on under the responsible direction and supervision of one [1] or more registered professional engineers, or land surveyors, who are registered under the provisions of this act [§§ 63-1517--63-1553]. Any plans, sheets of design or specifications, prepared by the personnel of any partnership, firm or corporation shall carry the signature and seal of the registered professional engineer, or land surveyor, who is in responsible charge of such professional engineering or land surveying work."

IOWA

Section 114.26, Iowa Code Annotated (1946), provides, in pertinent part, as follows:

"114.26 Applicability of chapter

"This chpater shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

"Corporations engaged in designing and building works for public or private interests not their own shall be deemed to practice professional engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of registration hereunder. * * *."

KANSAS

Chapter 26a, General Statutes of Kansas, Annotated (1949).

No specific provision relating to the corporate practice of engineering.

KENTUCKY

Section 322.060, Kentucky Revised Statutes (1956), provides as follows:

> "322.060 [1599e-12] Company not to be licensed. No company shall be licensed. Admission to practice shall be determined upon the basis of individual, personal qualifications."

LOUISIANA

Title 37, Chapter 8, Section 681 et seq., Louisiana Revised Statutes, 1950 (1956 Pocket Parts). No specific provision, but Section 695 states, in pertinent part, as follows:

> "§695. Certificates; seals
>
> * * *
>
> "Each registrant hereunder may upon registration obtain a seal of a design authorized by the board, bearing the registrant's name and the legend 'Registered Professional Engineer in .....' (insert the branch of engineering in which the registrant is registered), or 'Registered Land Surveyor'. All registrants engaged in the practice of engineering or land surveying either in a private professional practice or as an employee of a corporation, company, partnership, individual or other private employer shall impress with his official seal all plans, specifications, plats, maps, studies, reports or other drawings or documents which he shall prepare or which shall be prepared under his supervision."

MAINE

Chapter 83, Section 18, Revised Statutes of Maine, 1954, provides:

> "Sec. 18. Firms, partnerships, corporations and joint stock associations.--A firm, copartnership, corporation or joint stock association may engage in the practice of professional engineering in this state, provided only such

practice is carried on by professional engineers registered in this state."

MARYLAND

Article 75 1/2, Annotated Code of Maryland (1957).

No specific provision relating to the corporate practice of engineering.

MASSACHUSETTS

Chapter 112, Sections 81D-81T, Annotated Laws of Massachusetts (1949).

No specific provision, but Section 81R provides as follows:

"§81R. Restriction on Use of Title 'Registered Professional Engineer' etc.--Nothing in said sections shall be construed as requiring the registration or the licensing of any person as a prerequisite to the practice of professional engineering or land surveying, or as restricting the use by any person or name of all the terms 'engineer', 'professional engineer', 'civil engineer', 'mechanical engineer', 'electrical engineer', 'chemical engineer', 'industrial engineer', 'mining engineer', 'surveyor', 'land surveyor', and similar titles; but no person shall represent himself as, or use the title of, 'registered professional engineer' or 'registered land surveyor' or the use of the word 'registered' in combination with any engineering or surveying title unless he is registered as such in accordance with the certain provisions of said sections and his registration is in full force and effect."

MICHIGAN

Chapter 156, Section 18.84(17), Michigan Statutes Annotated (Revised Volume, 1957), provides:

"§18.84(17)] Rights of firms, copartnerships, corporations, etc., to practice, limitation. SEC. 17. An architectural or an engineering or a land surveying firm, or a copartnership, or a corporation, or a joint stock

association may engage in the practice of architecture, professional engineering, or land surveying in this state: Provided, That all partners, officers, and directors of such organizations shall be registered architects, registered professional engineers, or registered land surveyors."

MINNESOTA

Section 326.14, Minnesota Statutes Annotated (1945), provides:

"326.14 Corporations and partnerships authorized

"A corporation or partnership may engage in work of an architectural or engineering character, or in land surveying in this state, provided the person or persons connected with such corporation or partnership in responsible charge of such work is or are registered as herein required for the practice of architecture, engineering and land surveying."

MISSISSIPPI

Section 8791-24, Mississippi Code 1942, Annotated (Recompiled Volume, 1956), provides:

"§8791-24. Corporations or partnerships.

"A corporation or partnership may engage in the practice of professional engineering in this state, providing the person or persons connected with such corporation or partnership in charge of the designing, or supervision, which constitutes such practice, is or are registered as herein required of professional engineers. The same exemptions shall apply to corporations and partnerships as apply to individuals under this act."

MISSOURI

Section 327.080, Vernon's Annotated Missouri Statutes (1957 Cumulative

Annual Pocket Part), provides:

"§327.080 Registration not transferable--corporate authorization and practice--limitations

"1. The right to engage in the practice of architecture or in the practice of professional engineering shall be deemed a personal right, based upon the qualifications of the individual, evidenced by his certificate of registration, and shall not be transferable; however, any registered architect or any registered professional engineer may practice his profession through the medium of, or as a member or as an employee of, a partnership or corporation, provided the plans, specifications, estimates and reports of such partnership or corporation are signed and stamped with the personal seal of the registered architect or registered professional engineer by whom or under whose direction the same were prepared and the registered architect or registered professional engineer affixing his signature and personal seal to any such plans, specifications, estimates and reports shall be personally and professionally responsible therefor."

MONTANA

Section 66-2347(h), Revised Statutes of Montana, Annotated (1957 Cumulative Pocket Supplement), provides:

"66-2347. Practices to which act inapplicable. This act shall not be construed to prevent or to affect:

* * *

"(h) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation or joint stock association, or by its members, officers or employees on its behalf, provided each person in responsible charge of activities of the firm, copartnership, corporation or joint stock association which constitutes such practice is a professional engineer or land surveyor respectively, holding a certificate of registration under this act."

NEBRASKA

Section 81-854, Revised Statutes of Nebraska, 1943 (Reissue of 1950), provides:

> "81-854. Employing of architects; practice by business organizations; when authorized.
>
> "A firm, copartnership, corporation or joint stock association may engage in the practice of professional engineering or architecture in this state, provided such practice is carried on by persons registered under sections 81-839 to 81-856."

NEVADA

Section 625.240, Nevada Revised Statutes, provides:

> "625.240. Partnership, corporation, association may practice professional engineering.
>
> "A firm, a copartnership, a corporation or a joint-stock association may engage in the practice of professional engineering in this state, if the principal member or members of the firm, copartnership, corporation or joint-stock association in responsible charge of engineering work are registered professional engineers under the provisions of this chapter."

NEW HAMPSHIRE

Chapter 319, New Hampshire Revised Statutes Annotated, 1955.

> No specific provision relating to the corporate practice of engineering.

NEW JERSEY

Section 45:8-27, New Jersey Statutes Annotated, Permanent Edition (1957 Cumulative Annual Pocket Parts), provides, in pertinent part, as follows:

> "45:8-27. License required; display of licenses; exception: corporations, firms, partnerships and associations
>
> * * *
>
> "No corporation, firm, partnership or association shall be granted a license under this chapter. No corporation, firm, partnership or association shall use or assume a name involving the word 'engineers' or 'engineering' or any modification or derivative of such terms, unless an executive officer, if a corporation, or a member, if a firm, partnership or association, shall be a licensed professional engineer of the State of New Jersey.
>
> * * *
>
> "No corporation, firm, partnership or association shall practice or offer to practice professional engineering or land surveying in this State unless the person or persons in responsible charge of engineering or land surveying work shall be so licensed to practice in this State. The person or persons carrying on the actual practice of professional engineering or land surveying on behalf of or designated as 'engineers' or 'surveyors' or 'professional engineers' or 'land surveyor', with or without qualifying or characterizing words, by any such corporations, firms, partnerships or associations, shall be licensed to practice professional engineering or land surveying as provided in this chapter."

NEW MEXICO

Section 67-21-46, New Mexico Statutes 1953, Annotated (1957 Pocket Supplement), provides, in pertinent part, as follows:

"67-21-46. Form of organizations permitted to practice.--A. No firm, partnership, corporation or joint stock association shall be registered under the Engineering Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice engineering or land surveying in the state except as provided.

"B. Professional engineers and land surveyors may practice under the Engineering Practice Act as individuals, partners, or through joint stock associations or corporations. * * * In the case of practice through a joint stock association or corporation, services of work involving the practice of engineering, or practice of land surveying, or both, may be offered through such joint stock association or corporation provided the person in responsible charge of the activities of the joint stock association or corporation which constitute such practice is a professional engineer, or professional engineer and land surveyor, who has authority to bind such joint stock association or corporation by contract and that contracts which offer engineering or engineering and land surveying services to the public shall be filed by a professional engineer, or professional engineer and land surveyor, with the authority to bind such joint stock association or corporation by contract; and Further provided that all plans, designs, drawings, specifications or reports, which are involved in such practice, issued by or for such joint stock association or corporation bear the seal and signature of a professional engineer, or professional engineer and land surveyor, in responsible charge of and directly responsible for such work when issued.

* * *

"D. A firm, partnership, corporation, or joint stock association may not use or assume a name involving the terms 'engineer', 'engineering', 'surveyor', or 'land surveyor', or any modification or derivate of such terms unless such firm, partnership, corporation, or joint stock association is qualified to practice engineering or land surveying in accordance with the requirements of this section."

NEW YORK

Article 145, Section 7209, McKinney's Consolidated Laws of New York Annotated, Book 16, Part 3 (Education Laws), provides, in pertinent part, as follows:

> "§7209. Construction of article; corporations
>
> "1. No corporation shall be granted a license under this article, and no corporation shall practice or offer to practice professional engineering or land surveying in this state except as hereinafter in this section provided, nor shall any corporation hereafter formed use or assume a name involving the word 'engineers' or 'engineering' or any modification or derivative of such terms except a non-profit membership corporation composed exclusively of professional engineers. Nothing herein shall apply to a corporation, partnership or joint stock association, organized and existing under the laws of the state of New York which on the fifteenth day of April, nineteen hundred thirty-five, and continuously thereafter, was lawfully practicing professional engineering or land surveying in New York state, and then only provided that the chief executive officer, if a corporation, and each member if a firm, co-partnership or joint stock association, shall be a licensed professional engineer if practicing professional engineering or a licensed land surveyor if practicing land surveying, and provided further that the person or persons carrying on the actual practice of engineering or surveying on behalf of, or designed as an 'engineer' or 'surveyor', with or without qualifying or characterizing word, by such corporations, partnership or joint-stock association, shall be authorized to practice professional engineering or land surveying in this article. * * *".

NORTH CAROLINA

Section 89-13, General Statutes of North Carolina (1957 Cumulative Supplement), provides:

"§89-13. Corporate or partnership practice of engineering or land surveying.--A corporation or partnership may engage in the practice of engineering or land surveying in this State: Provided, however, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of professional engineers and land surveyors. The same exemption shall apply to corporations and partnerships as apply to individuals under this chapter."

NORTH DAKOTA

Section 43-1901, et seq., North Dakota Revised Code of 1943.

No specific provision relating to the corporate practice of engineering.

OHIO

Section 4733.16, Page's Ohio Revised Code Annotated, provides:

"§4733.16. Practice by firm, copartnership or association (GC §1083-18).

"A firm, copartnership, or an association may engage in the practice of professional engineering or land surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

"No corporation shall be granted a charter to engage in the practice of professional engineering or surveying, nor shall any corporation formed after August 6, 1943 use or assume a name involving the word 'engineer' or 'engineering' or any modification or derivative of such term except a non-profit membership corporation."

OKLAHOMA

Title 59, Section 445, Oklahoma Statutes Annotated, Permanent Edition, provides:

> "§445. Practice by firm, corporation or political sub-division--Direction by registered professional engineer.
>
> "A firm, co-partnership, corporation, or a political subdivision of the State of Oklahoma, may engage in the practice of professional engineering in this State only provided such practice is carried on under the immediate responsible direction of at least one (1) registered professional engineer whose name and seal shall appear on all plans and other official documents issued in connection with such professional engineering practice."

OREGON

Section 672.030, Oregon Revised Statutes, provides:

> "672.030. Practice of corporations, firms and partnerships. A corporation, firm or partnership may engage in the practice of professional engineering in this state if the persons connected with the corporation, firm, or partnership in charge of designing or supervision that constitutes the practice of professional engineering are registered as required of professional engineers. All personal documents named in subsection (2) of ORS 672.029, issued by the corporation, firm, or partnership, shall bear the seal of the registered professional engineers of the corporation, firm, or partnership. The same exemptions apply to corporations, firms, and partnerships as apply to individuals under ORS 672.010 to 672.340."

PENNSYLVANIA

Title 63, Section 153, Purdon's Pennsylvania Statutes Annotated, Permanent Edition (1957 Cumulative Annual Pocket Parts), provides:

"§153. Practice by firms and corporations

"The practice of engineering and of surveying being the functions of an individual or of individuals working in concerted effort, it shall be unlawful for any firm or corporation to engage in such practice, or to offer to practice, or to assume, use or advertise any title or description conveying the impression that such firm or corporation is engaged in or is offering to practice such profession, unless the directing heads and employees of such firm or corporation in responsible charge of its activities in the practice of such profession are licensed and registered in conformity with the requirements of this act, and whose name and seal shall be stamped on all plans, specifications, plats and reports issued by such firm or corporation."

RHODE ISLAND

Title 5, Chapter 8, Section 5-8-19, General Laws of Rhode Island, 1956, provides:

"5-8-19. Corporations and firms ineligible.--The practice of engineering shall be construed to be a professional service, admission to which shall be determined upon a basis of individual 'personal qualifications. No firm, company, public body, partnership or corporation shall be eligible for registration."

SOUTH CAROLINA

Section 56-701, et seq., Code of Laws of South Carolina.

No specific provision relating to the corporate practice of engineering.

SOUTH DAKOTA

Title 18, Section 18.0102, South Dakota Code of 1939, as amended by H.B. 1027 approved March 18, 1957, Session Laws of South Dakota,

1957, provides, in pertinent part, as follows:

> "§18.0102 Scope, application, exemption and special permits. The provisions of this chapter shall apply to every Corporation, domestic or foreign, engaged in the business of professional engineering, architecture, or land surveying within the State of South Dakota, except that a certificate of registration issued hereunder shall be held by its persons or employees having responsible charge of work instead of by such Corporation."

TENNESSEE

Section 62-219, Tennessee Code Annotated, Official Edition, provides:

> "62-219. Corporations and partnerships.--A corporation or partnership may engage in the practice of architecture or engineering in this state, provided at least one (1) of the principals of such corporation or partnership is in responsible charge of such practice and is registered as herein required of architects and engineers, or is otherwise by this chapter authorized to practice. The same exemption shall apply to corporations and partnerships as apply to individuals under this chapter."

TEXAS

Title 52A, Article 3271a, Section 17, Vernon's Civil Statutes of the State of Texas, Annotated, provides:

> "Sec. 17. A firm, or a co-partnership, or a corporation, or a joint stock association may engage in the practice of professional engineering in this State, provided such practice is carried on by only professional engineers registered in this State."

UTAH

Section 58-22-21(f), Utah Code Annotated (1957 Pocket Supplement)

> "58-22-21. Exemption.--* * *
>
> "(f) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation or joint stock association provided such practice is carried on by professional engineers or land surveyors respectively authorized to practice under the provisions of this act."

VERMONT

Title 32, Section 6826, Vermont Statutes, Revision of 1947, provides:

> "6826. Practice by corporations. A firm, or a copartnership, or a corporation or a joint stock association may engage in the practice of professional engineering in this state, provided such practice is carried on by professional engineers registered in this state."

VIRGINIA

Section 54-17, et seq., Code of Virginia, 1950.

> No specific provision relating to the corporate practice of engineering.

WASHINGTON

Chapter 18.43, Title 18, Revised Code of Washington.

> No specific provision relating to the corporate practice of engineering.

WEST VIRGINIA

Section 2974(2), Chapter 30, West Virginia Code of 1955 Annotated, provides:

"§2974(2).[11] Application of Article to Firms or Corporations.--A firm, or a copartnership, or a corporation, or a joint stock association may engage in the practice of professional engineering in this State only provided such practice is carried on by professional engineers registered in the State."

WISCONSIN

Section 101.31(7), West's Wisconsin Statutes Annotated (1957) provides:

"101.31(7) Partnership or corporation. (a) A firm, or a copartnership, or a corporation, or a joint stock association may engage in the practice of architecture or professional engineering in this state only provided such practice is carried on under the responsible direction of one or more registered architects or professional engineers. Any and all plans, sheets of design and specifications shall carry the signature of the registered architect or registered professional engineer who is in responsible charge.

"(b) No such firm, or copartnership, corporation, or joint stock association shall offer to practice the profession of architecture or the profession of professional engineering in this state, or to use in connection with its name or otherwise assume, use or advertise any title or description tending to convey the impression that it is engaged in the practice of the profession of architecture or the profession of professional engineering, nor shall it advertise to furnish architectural or professional engineering services, unless firm members or copartners owning a majority of the capital interest in such firm or copartnership, or unless the executive director and the holders of the majority of stock of such corporation or joint stock association are duly registered under the provisions of this section."

WYOMING

Section 37-2211, Wyoming Compiled Statutes, 1945, Annotated, provides, in pertinent part, as follows:

"37-2211. Exceptions.--* * *

"Corporations engaged in designing and supervising the building or works for public or private interests not their own, shall be deemed to practice professional engineering or land surveying within the meaning of this Act [§37-2201-37-2213]. With respect to such corporations, all principal or constructing engineers shall hold certificates of registration hereunder. * * *".

BRIEF FOR RESPONDENTS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,209

DISTRICT OF COLUMBIA, *Petitioner,*

v.

WM. K. KARSUNKY, et al., a partnership doing business as Karsunky, Weller & Gooch, *Respondents.*

NO. 14,210

DISTRICT OF COLUMBIA, *Petitioner,*

v.

JAMES M. GONGWER, *Respondent.*

NO. 14,211

DISTRICT OF COLUMBIA, *Petitioner,*

v.

BERNARD F. LOCRAFT, *Respondent.*

NO. 14,212

DISTRICT OF COLUMBIA, *Petitioner,*

v.

JAMES M. GONGWER, as surviving partner of himself and THOMAS W. MARSHALL, a partnership having done business as Marshall and Gongwer, *Respondents.*

NO. 14,213

DISTRICT OF COLUMBIA, *Petitioner,*

v.

STEWART H. BEALL and JAMES W. LeMAY, a partnership doing business as Beall & LeMay, *Respondents.*

On Petitions to Review Orders of the Tax Court of the District of Columbia

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United States Court of Appeals
For the
District of Columbia Circuit
FILED FEB 21 1958
Joseph W. Stewart
CLERK

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

QUESTION PRESENTED

The ultimate question to be decided by this Court is whether the profession of engineering as practiced by these respondents is exempted from the District of Columbia unincorporated business franchise tax. Necessary to the determination of the ultimate question is the question as to whether the practice of engineering by these respondents is a trade or a business which cannot by law be incorporated within the meaning of Title 47, Section 1574, of the Code of the District of Columbia, and therefore, by definition not subject to the tax.

INDEX

Subject Index

	Page
Question Presented	Frontispiece
Counterstatement of the Case	2
Statutes Involved	2
Summary of Argument	4
Argument:	
I. *Congress intended to treat the profession of engineering as a profession which could not be practiced by a corporation and to exclude the engineering profession from the operation of the unincorporated business franchise tax*	5
II. *Since this Court has held that the Professional Engineers' Registration Act prohibits the registration of engineering corporations, and only registered natural persons may practice, a corporation may not engage in the practice of engineering*	6
III. *The Commissioners, by regulation and by approval of an opinion of the Corporation Counsel, have construed the prohibition to practice a profession by a corporation as a legal obstacle to the incorporation of the profession*	8
IV. *If the purpose for which incorporation is sought is unlawful, the trade or profession involved cannot be incorporated*	14
Conclusion	15

CASES CITED

Potomac Engineers, Inc. v. *Walser*, 127 F. Supp. 41	6, 11, 13, 14
Potomac Engineers, Inc. v. *Walser*, 96 U.S. App. D.C. 64; 223 F. 2d 356	6
Mallory Coal Co. v. *National Bituminous Coal Commission*, 99 F. 2d 399, 69 App. D.C. 166	8
Koshland v. *Helvering*, 298 U.S. 441, 80 L. Ed. 1268	9
Silver v. *Lansburg*, 72 App. D.C. 27, 111 F. 2d 518	13

STATUTES CITED

	Page
64 Stat. 863	2
30 Stat. 477	2
47 Stat. 659	2
June 8, 1954, 68 Stat. 180, ch. 269, § 3, effective Dec. 5, 1954	3
Act of March 4, 1914, 37 Stat. 974, ch. 150, Sec. 8, Par. 1	7
July 2, 1940, 54 Stat. 721 ch. 513, § 16	10
District of Columbia Income and Franchise Tax Act of 1947, as amended:	
Regulation Sec. 8.1 (a)	3, 9
Regulation Sec. 8.1 (c)	4
Regulation Sec. 8.1 (c) (1)	4, 9
Regulation Sec. 8.1 (c) (2)	9
District of Columbia Code, 1951:	
Section 2-1810	2, 7
Section 2-1405	2, 7
Section 29-903	3, 5, 14
Section 2-1804	6
Section 47-1595	8
Section 47-1574	9
Section 2-316	10
Section 2-707	10
Section 2-901	11

MISCELLANEOUS AUTHORITIES CITED

96 Congressional Record, Sept. 13, 1950, page 14832	5
House Report No. 1873, 84th Congress; Senate Report No. 1713, both to accompany House Report No. 9770	5
CCO Opinion 785.3, Berla, Julian E., approved Feb. 3, 1948	12
CCH D. C. Tax Reporter 10-074	12

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STEWART H. BEALL and JAMES W. LeMAY, a partnership doing business as Beall & LeMay, *Respondents.*

On Petitions to Review Orders of the Tax Court of the District of Columbia

BRIEF FOR RESPONDENTS

COUNTERSTATEMENT OF THE CASE

Petitioner has adequately stated the facts material to a consideration of the question except that in its Brief, on

pages 28 and 32, there are statements that many engineering corporations, both domestic and foreign, are practicing engineering in the District of Columbia. The record reference (J.A. 7) does not support such statement nor does any other evidence in the record.

STATUTES INVOLVED

Not included in the Brief of Petitioner are the following statutes and regulations which respondents deem necessary to a consideration of the matter of this Appeal.

D. C. Code, 1951, as amended, Title 2, Section 1810, 64 Stat. 863:

> *Exemption.* Nothing in this chapter shall be construed to affect or prevent the following: * * *
>
> "(g) The practice of engineering exclusively as an officer or employee of a public-utility corporation (sections 43-122 and 43-123) by rendering to such corporation such service in connection with its facilities and property which are subject to supervision with respect to safety and security thereof by the Public Utilities Commission of the District of Columbia and so long as such person is thus actually and exclusively employed and no longer: *Provided, however,* that each such public-utility corporation shall employ at least one registered professional engineer who shall be in responsible charge of such engineering work."

D. C. Code, 1951, as amended, Title 2, Section 1405, 30 Stat. 477, 47 Stat. 659:

> "All renewals of existing licenses and all new licenses as a master plumber and gas fitter or master gas fitter shall be for a period of not more than one year and the fee for such license shall be not less than $10.00 nor more than $25.00 per annum, to be fixed by the commissioners of the District of Columbia, for a license year beginning January 1 and ending December 31. Such special license fee shall be separate from, or in addition to any contractors' or business license tax, hereafter fixed for this and similar occupations

by the Commissioners of the District of Columbia according to law. Licenses issued at any time after the beginning of the year shall date from the first day of the month in which the license is issued and end on the last day of the license year, and payment shall be made of a proportional amount of the annual license fee. Any licensee may apply for and receive a license for or on behalf of any firm, co-partnership, or corporation that he is a bona fide member of, or a substantial stockholder in, but all plumbing or gas fitting done pursuant to such license shall be done under the immediate personal supervision of the licensed man."

D. C. Code, 1951, as amended, Title 29, Section 903, 68 Stat. 180:

Purposes. Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided*, that nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations: *Provided further*, that no corporation may be organized under this chapter unless the place where it conducts its principal business is located within the District of Columbia. (June 8, 1954, 68 Stat. 180, ch 269, § 3, effective Dec. 5, 1954)"

Regulations promulgated by the Commissioners under the Income and Franchise Tax Act of 1947, as amended:

"*Regulation Sec. 8.1. Unincorporated Business Defined.*—* * *

"(a) *Design of the Unincorporated Business Franchise Tax.*—The design of the unincorporated business tax under the law is to impose a tax upon all business income which would be subject to the corporation franchise tax, if incorporated, regardless of whether the business is carried on by an individual,

by a partnership, or by some other unincorporated entity. * * *

"(c) *Personal Service Businesses—Requirements for exemption.*—To be exempted from the tax imposed upon unincorporated trades or businesses rendering personal services the following requirements prescribed by law must be met:

"(1) The trade or business must be one which, by law, customs or ethics cannot be incorporated. * * *

"If the trade or business meets the requirements set forth in item (1) above, it is thereby exempted without the need of meeting the requirements set forth under item (2). Title 2, District of Columbia Code, 1951 edition, prohibits the incorporation of certain occupations, for example, dentistry, dental surgery, podiatry and certified public accountancy. Among the trades or professions recognized as exempt from the tax under these Regulations because they cannot by customs or ethics be incorporated, are the professions of law, medicine and surgery. * * *"

SUMMARY OF ARGUMENT

It was the clear intention of Congress to treat the profession of engineering as a profession which could not be practiced by a corporation, and to exclude the engineering profession from the operation of the unincorporated business franchise tax. This Court has held that the Professional Engineers' Registration Act prohibits the registration of engineering corporations. Since only registered natural persons may practice, a corporation may not engage in the practice of engineering. The Commissioners of the District of Columbia, by regulation and by formal approval of an opinion of the Corporation Counsel, have construed the prohibition to practice a profession by a corporation as a legal obstacle to the incorporation of the profession for the purpose of practicing. It would seem to follow that if a corporation were organized for the purpose and object of engaging in the practice of engineering,

it would be organized for an unlawful purpose, and hence, would be prohibited under D. C. Code, Section 29-903.

ARGUMENT

I.

Congress intended to treat the profession of engineering as a profession which could not be practiced by a corporation and to exclude the engineering profession from the operation of the unincorporated business franchise tax.

Speaking of the Professional Engineers' Registration Act, Chairman MacMillan of the District House Committee (96 Congressional Record, Sept. 13, 1950, page 14832), said:

> "* * * In meetings held before the Committee on the District of Columbia on this bill (H. R. 1188) it was not the understanding of the Committee that a corporation should either practice engineering or be licensed to practice engineering."

That such understanding of Congress persisted long after the passage of the Professional Engineers' Registration Act is patent from the following language appearing in both the House and Senate Reports in connection with the District of Columbia Revenue Act of 1956, (House Report No. 1873, 84th Congress; Senate Report No. 1713, both to accompany House Report No. 9770):

> "* * * Title I also imposes an annual license fee of $25 on persons engaged in unincorporated trades, businesses, and professions, other than those of registered nurse and practical nurse, who, under existing law, are exempted by definition from the unincorporated business franchise taxes. In determining the professions required to pay such annual license fee of $25, it is intended that professions such as accountants (including public accountants and certified public accountants), architects, dentists, doctors, (including chiropractors and osteopaths), surgeons, *engineers,* lawyers, optometrists, podiatrists, veterinarians, and pharmacists, shall be included." (Italics supplied)

II.

Since this Court has held that the Professional Engineers' Registration Act prohibits the registration of engineering corporations, and only registered natural persons may practice, a corporation may not engage in the practice of engineering.

By judicial interpretation, Title 2, Section 1804, of the 1951 Code of the District of Columbia, amended, has been construed to prevent the registration of other than natural persons. In *Potomac Engineers, Inc.*, v. *Walser*, 127 F. Supp. 41, the District Court denied the application of a corporation for an engineering license under the Registration Act, and stated:

> "It is clear to the Court that the statute must be construed by its very terms as inapplicable to corporations and applicable to natural persons only.
>
> "It may be added that traditionally only natural persons can practice a learned profession, because only natural persons can be charged with the moral responsibility that the practice of a learned profession requires. While traditionally the learned professions have been regarded as the law, medicine and the ministry, I think that engineering, too, may properly be included in that class.
>
> "The Court concludes that the Board was correct in taking the position that a corporation is not entitled to registration as a professional engineer."

This case was affirmed per curiam by this Court in 96 U.S. App. D.C. 64; 223 F. 2d 356.

Counsel for petitioner argues that the effect of this decision is not to prevent practice as a corporation as long as the corporation practices engineering through registered engineers. However, by ordinary principles of corporation law, if the corporation is represented by licensed engineers who are its officers or employees acting for or on its behalf and in the name of the corporation, the cor-

poration is practicing engineering, and as an unregistered entity. If the officers and employees do not purport to act for and on behalf of the corporation, then they would be acting individually, and the corporation would have no business life or income upon which the tax could operate.

Congress well knew how to provide for the practice of a trade or profession by a corporation. This is exemplified by Code, Title 2, Section 1810, a part of the Professional Engineers' Registration Act, which reads as follows:

> "Nothing in this chapter shall be construed to affect or prevent the following:
>
> "(g) The practice of engineering exclusively *as an officer or employee of a public-utility corporation* (Act Mar. 4, 1914, 37 Stat. 974, Ch. 150, Sec. 8, Par. 1) by rendering *to such corporation* such service *in connection with its facilities* and property which are subject to supervision with respect to safety and security thereof by the Public Utilities Commission of the District of Columbia and so long as such person is thus actually and exclusively employed and no longer; *Provided, however*, that each such public-utility corporation shall employ at least one registered professional engineer who shall be in responsible charge of such engineering work." (Italics supplied)

Surely, if the contention of the District is correct, that there is no prohibition against a corporate practice of engineering through the employment of registered engineers, the above Code section authorizing an exception in the cases of public-utility corporations employing engineers, would be totally unnecessary.

Again, in Title 2, Section 1405, Congress permitted the corporate practice of plumbing in the following language:

> "All renewals of existing licenses and all new licenses as a master plumber and gas fitter or master gas fitter shall be for a period of not more than one year and the fee for such license shall be not less than $10.00 nor more than $25.00 per annum, to be fixed by

> the Commissioners of the District of Columbia, for a license year beginning January 1, and ending December 31. Such special license fee shall be separate from, or in addition to any contractors' or business license tax, hereafter fixed for this and similar occupations by the Commissioners of the District of Columbia according to law. Licenses issued at any time after the beginning of the year shall date from the first day of the month in which the license is issued and end on the last day of the license year, and payment shall be made of a proportional amount of the annual license fee. *Any licensee may apply for and receive a license for or on behalf of any firm, co-partnership, or corporation that he is a bona fide member of, or a substantial stockholder in, but all plumbing or gas fitting done pursuant to such license shall be done under the immediate personal supervision of the licensed man.*" (Italics supplied)

Here again, Congress specifically permitted the corporate practice of engineering by a plumbing corporation by express language to that effect, and provided both in respect to public utility and plumbing corporations for supervision by a licensed natural person.

III.

The Commissioners, by regulation and by approval of an opinion of the Corporation Counsel, have construed the prohibition to practice a profession by a corporation as a legal obstacle to the incorporation of the profession.

The Commissioners are given authority (D.C. Code, Title 47, Section 1595) to prescribe and publish rules and regulations consistent with the provisions of the unincorporated business tax act and such as may be necessary and proper for its enforcement and efficient administration. Such rules and regulations not in conflict with the law, have the force and effect of law (*Mallory Coal Co.* v. *National Bituminous Coal Commission,* 99 F. 2d 399, 69 App. D.C. 166), and where a statute is ambiguous, a regulation indicating the methods of its application to specific cases

is to be given great weight by the courts. (*Koshland* v. *Helvering*, 298 U.S. 441, 80 L. Ed. 1268)

By Regulation 8.1 (a) the design of the unincorporated business tax under the law is,

> "* * * to impose a tax upon all business income which would be subject to the corporation franchise tax, if incorporated, regardless of whether the business is carried on by an individual, by a partnership, or by some unincorporated entity * * *"

The law is designed to prevent those who may operate as corporations but nevertheless, for reasons of their own, choose to practice a trade or business or profession in the unincorporated form from avoiding the higher taxes imposed by the District Law upon the business income of corporations. If, however, the business or trade or profession is one which "by law, customs, or ethics, cannot be incorporated", it is exempted from the operation of the unincorporated business franchise tax by the basic Act (D.C. Code 47-1574) and Regulation 8.1 (c) (1). Thus, if one or more persons cannot for any of the three foregoing reasons, viz., law, customs, or ethics, create business income by practice under the corporate form, practice as an unincorporated individual or group is not penalized by imposition of the higher corporate rates.

The Commissioners, in adopting the Regulations accompanying the Unincorporated Business Franchise Act, have themselves placed an interpretation upon the Act contended for by these respondents.

In Regulation 8.1 (c) (2) is found the following language:

> "Title 2, District of Columbia Code, 1951 Edition, *prohibits* the incorporation of certain occupations, for example, dentistry, dental surgery, podiatry, and certified public accountancy." (Italics supplied)

If the so-called "prohibitions" against incorporation of these various occupations are read in the light of the Regulation, it is clearly seen that the Commissioners had reference to the right to *practice* as a corporation rather than the right to incorporate.

Title 2, Section 316 of the D. C. Code in reference to dentists and dental surgeons, reads as follows:

> "On and after July 2, 1940, it shall be unlawful for any person or persons *to practice or offer to practice* dentistry or dental surgery under any name except his proper name, which shall be the name used in his license granted to him as a dentist, as provided for in this chapter; *and unlawful to use the name of any company, association, corporation, trade name, or business name in connection with the practice of dentistry as defined in this law.* Any person convicted of a violation of the provisions of this section shall be fined for the first offense not more than $200, and upon a second or any subsequent conviction thereof, by a fine not to exceed $500, and upon conviction his license may be suspended or revoked. (July 2, 1940, 54 Stat. 721, Ch. 513, § 16)" (Italics supplied)

Title 2, Section 707, D. C. Code, in respect to podiatrists, reads as follows:

> "The District Court of the United States for the District of Columbia may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to said Court. * * *
>
> (f) That such holder is guilty of unprofessional conduct.
>
> "The following acts on the part of a podiatrist are hereby declared to constitute unprofessional conduct: * * *
>
> "(4) *Practicing* podiatry under a false or assumed name *or corporate name* other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the board." (Italics supplied)

Title 2, Section 901, D. C. Code, relating to certified public accountants, reads as follows:

> "Any person who has received from the Board of Accountancy, hereinafter created, a certificate of his qualifications to practice as a public accountant shall be known and styled as a 'Certified Public Accountant', and no other person, and no partnership all of the members of which have not received such certificate, *and no corporation shall assume such title* or the title of 'certified accountant' or the abbreviation 'C.P.A.' or any other words, letters, or abbreviations tending to indicate that the person, firm, or corporation so using the same is a Certified Public Accountant." (Italics supplied)

In all of these instances, as will be seen, there is no prohibition against incorporating dentists, podiatrists, or certified public accountants.

The thrust of the code provision in each case is against *practice,* and yet, the Regulations declare that the law prohibits the incorporation of the above occupations, which on the basis of those Regulations have enjoyed exemption for years.

By Act of Congress approved September 7, 1950, the Architects' Registration Act was amended to provide among other things as follows:

> "* * * no firm, company, partnership, association, *corporation,* or other similar organization *shall be registered as an architect.* Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title 'Architects' or 'Registered Architects'." (Italics supplied)

Potomac Engineers, Inc., v. *Walser, supra,* virtually writes the identical language into the Professional Engineers' Registration Act.

The law prior to the amendment had read,

> "A corporation whose prior business, as shown by its charter, is the practice of architecture may apply

> for and obtain a certificate of registration, provided all of its executive officers and directors are registered architects."

The Assessor of the District of Columbia having previously obtained a ruling of the Corporation Counsel that under the prior Act, architects were not exempt from the tax (CCO Opinion 785.3, Berla, Julian E., approved February 3, 1948), now sought the opinion of the Corporation Counsel as to whether registered architects by virtue of the Amendment of 1950 became exempt. In the course of the opinion the Corporation Counsel stated,

> "It becomes necessary to determine, therefore, whether under the terms of said Act a corporation may *practice* architecture as a registered architect," (Italics supplied)

and in conclusion stated,

> "We conclude, therefore, that registered architects, as such, are exempt from liability of the District of Columbia unincorporated business tax."

The opinion was approved by the Commissioners, April 17, 1951, and reference thereto may be found in CCH D.C. Tax Reporter 10-074.

Petitioner seems to contend that the mere physical power to obtain a corporate charter is sufficient to defeat the exemption. It must be obvious that what is meant by the statute and by the regulations in support thereof, is that the right to practice as a corporation or to engage in business as such is the controlling factor. If the corporation itself through its agents and employees did not practice engineering, how could it conceivably receive a business income which would be the subject of the tax in question? To hold otherwise would render the Act and Regulations meaningless because there is no specific prohibition against the incorporating of dentists, dental surgeons, podiatrists,

or certified public accountants, all declared exempt by the Commissioners under the "cannot incorporate" provision. Unless there was some doing of business as a corporation, some income and disbursement resulting to the corporation from the practice of engineering, there would be nothing upon which the tax could operate. None of the usual advantages of doing business as a corporation can result to engineers, such as limited liability, continuity of ownership, and the like. There can be little doubt that to plead the corporate entity as a shield against a claim growing out of the practice of engineering would be futile. The statute and regulations must be construed, in order to give them vitality, to mean inability to practice or do business as a corporation rather than the naked power to form a mere corporate shell.

Nor does *Silver* v. *Lansburg,* 72 App. D.C. 27, 111 F. 2d 518, lead to a contrary interpretation. The Court there said,

> "There is no more reason to prohibit a corporation, organized for the purpose, from employing licensed optometrists, than it is to prohibit similar employment of accountants, architects, or engineers."

Petitioner in its Brief in *Potomac Engineers, Inc.* v. *Walser, supra,* declared:

> "* * * but, of course, the Silver case was decided ten years prior to the enactment of the statute here involved,"

And both the Commissioners and the Corporation Counsel have since ruled, by regulation and by opinion, that accountancy and architecture are exempt from the tax involved in this Appeal under the "cannot be incorporated" rule, though each of these professions is specifically mentioned in the Silver case.

IV.

If the purpose for which incorporation is sought is unlawful, the trade or profession involved cannot be incorporated.

Potomac Engineers, Inc. v. *Walser, supra,* has held the practice of engineering by a corporation to be unlawful, since only natural persons are permitted to register and registered engineers alone can practice. D. C. Code 29-903 permits the organization of corporations "for any lawful purpose or purposes". Such a statute vests within the Superintendent of Corporations the authority and duty to determine prior to accepting incorporation papers whether the purposes for which incorporation is sought are permissible under the laws of the District of Columbia. If, as is the case with engineers, it has been judicially determined that the practice of engineering by a corporation is unauthorized, it would seem to follow that an organization formed for that purpose should be denied the privilege of incorporation as contrary to the law. As is pointed out in the opinion of the Tax Court, the Superintendent of Corporations has refused to accept for filing the certificate of incorporation of an organization seeking to practice medicine although composed of members of the medical profession. No express prohibition exists under the laws of the District of Columbia against incorporating such a group, but it is obviously contrary to custom and ethics. Custom and ethics certainly should be accorded no higher prohibitive quality than an opinion of this Court. Therefore, it would seem that even if the exemption provision of statute is to be read literally, the profession of engineering cannot be incorporated under the laws of the District of Columbia.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decisions of the District of Columbia Tax Court in favor of respondents should be affirmed.

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